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Briefings on How To Use the Federal Register—  
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issue.

# Federal Register



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- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### WASHINGTON, DC

**WHEN:** September 13; at 9:00 a.m.

**WHERE:** Office of the Federal Register,  
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**RESERVATIONS:** Doris Tucker, 202-523-3419

### CHICAGO, IL

**WHEN:** September 19; at 9:15 a.m.

**WHERE:** Room 3320,  
Federal Building,  
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**RESERVATIONS:** Call the Federal Information Center,  
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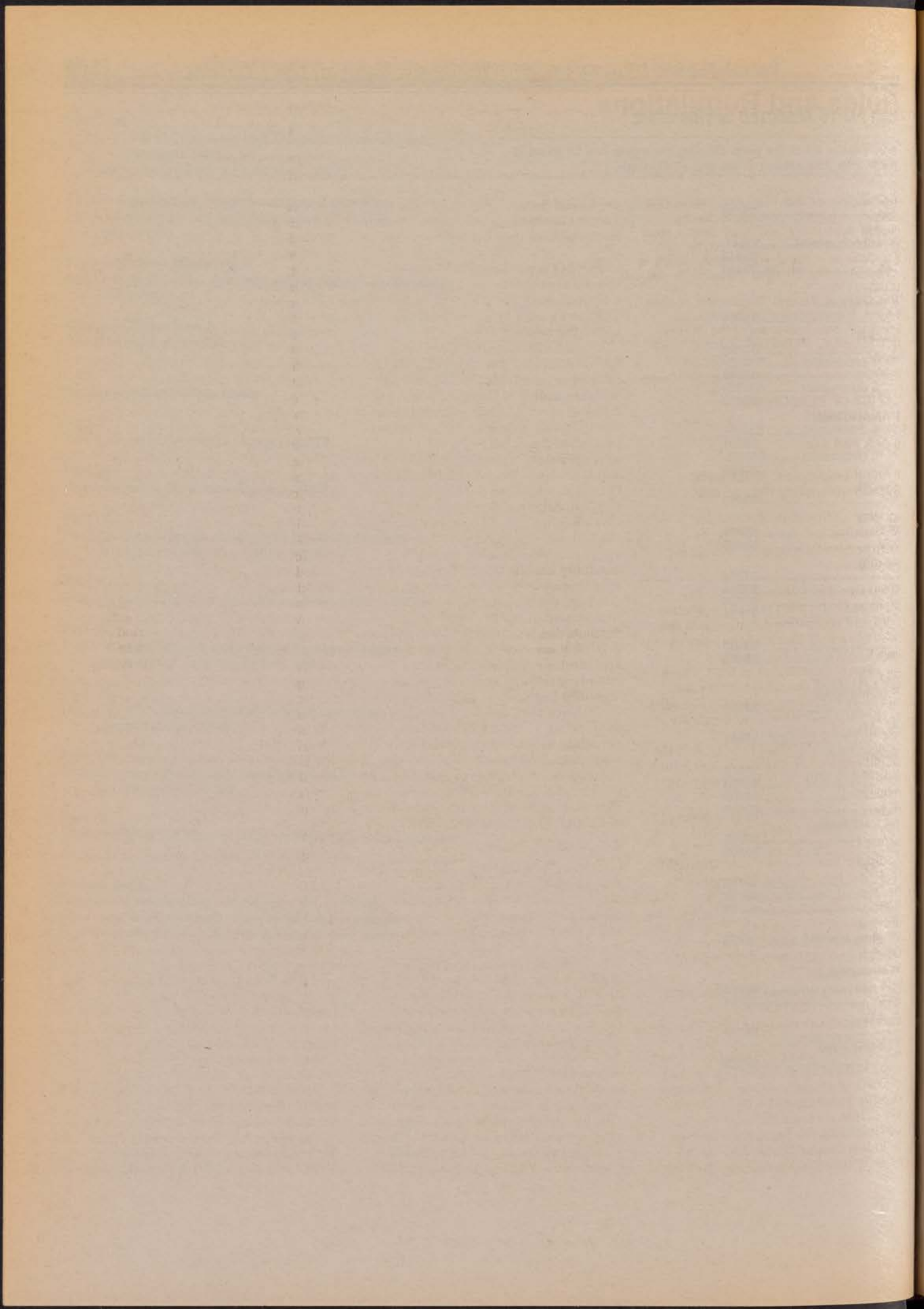
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# Rules and Regulations

Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 844

#### Federal Employees' Retirement System—Disability Retirement

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim rules and requesting comments on the rules governing disability retirement under the Federal Employees' Retirement System Act of 1986. These rules establish the requirements for eligibility to receive a disability annuity, application procedures for disability annuities, the methodology for computing a disability annuity, and the conditions and procedures under which a disability annuity is terminated and reinstated.

**DATES:** Interim rules effective January 1, 1987; comments must be received on or before October 31, 1988.

**ADDRESS:** Send comments to Reginald M. Jones, Jr.; Assistant Director for Retirement and Insurance Policy; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 57, Washington, DC 20044, or deliver to OPM, Room 4351, 1900 E Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Gay Gardner, (202) 632-4682.

**SUPPLEMENTARY INFORMATION:** The FERS Act of 1986, Pub. L. 99-335, established a new retirement system for some Federal employees. This system consists of a basic annuity plan, social security benefits, and a thrift savings plan. OPM is responsible for administering the basic annuity plan, including disability benefits. Social security benefits are administered by

the Social Security Administration. The Federal Retirement Thrift Investment Board will manage the thrift savings plan.

Part 844 is one part of a series of interim regulations being published by OPM to implement the FERS Act of 1986. This part governs disability retirement under the new system.

In brief, FERS provides disability benefits to employees with at least 18 months of creditable civilian service who are unable to provide "useful and efficient service." During the first year of disability, the annuitant is entitled to 60 percent of his or her highest 3-years' average salary, minus 100 percent of the approximate social security disability benefit to which the annuitant may be entitled. After the first 12 months of disability, the benefit is 40 percent of the "high-three" salary, minus 60 percent of the approximate social security disability benefit, if any. Annuitants who receive benefits under these provisions will have their benefits recomputed at age 62. These computation provisions do not apply to disability annuitants who meet the age and service requirements for normal voluntary retirement at the time their annuities begin; these individuals will have their benefits computed under the appropriate formula for immediate annuities. They, like all disability annuitants, will receive cost-of-living adjustments regardless of their age. The computation of disability annuities is described more fully in the explanation of Subpart C of these regulations.

#### I. General Provisions

Subpart A of Part 844 contains general provisions regarding disability retirement under FERS. Section 844.101 describes the purpose of the regulations, and § 844.102 defines terms used in the regulations.

Section 844.103 sets forth the conditions for eligibility for a FERS disability annuity. These conditions, with the exception of the requirement that the individual must have performed 18 months of creditable civilian service, do not apply to military reserve technicians. These technicians are members of reserve components of the armed forces working as civilians in administrative or training positions or in supply maintenance and, as a condition of employment, they are required to maintain membership in the particular

reserve component at a specified military grade. Section 8457 of Title 5, United States Code, allows a reserve technician to receive a disability annuity under FERS if the technician is not disabled for his or her civilian duties but loses, because of a disabling condition, membership in the reserve component or the military grade that is required for the individual to remain qualified for the technician position.

Section 844.105 clarifies the relationship between FERS annuities and workers' compensation benefits under subchapter I of chapter 81 of Title 5, United States Code. An individual entitled to both a FERS annuity and recurring compensation payments must elect one benefit or the other. There are only two exceptions to this rule. An individual may concurrently receive a FERS annuity based on his or her own service and compensation benefits based on the death of another individual. Also, an individual may receive compensation because of his or her own disability and a FERS survivor annuity covering the same period of time. An individual who elects to receive compensation benefits retains the right to elect a FERS annuity when his or her compensation payments terminate or are reduced, provided he or she has not received a refund of FERS contributions. These rules conform to the current relationship between annuities under the Civil Service Retirement System (CSRS) and workers' compensation benefits.

#### II. Applications for Disability Retirement

Subpart B of Part 844 sets forth the requirements for disability retirement applications under FERS. The law requires a FERS disability annuity to be reduced by an approximation of any social security disability benefit to which the individual may be entitled during the first year of FERS benefits, and by a portion of the approximate social security benefit thereafter. Consequently, OPM is requiring applicants for disability retirement under FERS to apply for social security disability benefits or to provide a statement from the Social Security Administration that the individual is not entitled to social security disability benefits because he or she lacks insured status under the Social Security Act. This requirement is needed to enable OPM to comply with 5 U.S.C. 8452(a)(2),



which requires that a FERS disability annuity be reduced as described above. If the applicant does not apply for social security disability benefits or does not supply proof that he or she is not entitled to such benefits, OPM cannot begin disability retirement payments under FERS because we will not know the correct amount to pay.

The Social Security Administration is, of course, responsible for evaluating applications for social security disability benefits. The determination of entitlement to social security benefits is entirely distinct from the determination of entitlement to a FERS disability annuity. The principal difference is that, while an individual must be disabled for his or her position in order to be considered "disabled" under FERS, he or she must be totally disabled for any employment in order to qualify for social security disability benefits.

Section 844.202 governs disability retirement applications filed by agencies on behalf of employees. Section 8451(a)(1)(A) of Title 5, United States Code, provides for agency-filed applications for disability retirement. These regulations require an agency to apply on the employee's behalf when (1) it has decided to remove the employee; (2) it has medical evidence indicating that disease or injury is causing the employee's service deficiency and that the employee is incapable of deciding to file a disability application; and (3) the employee has no personal representative, guardian, or family member who is willing to apply on the employee's behalf. OPM will not act on the application until it receives notice that the employee has been separated. We believe applying these strict criteria to agency-filed applications will ensure that the disability retirement program will be used appropriately and not in place of the normal procedures for separating an employee whose performance or conduct is unsatisfactory.

### III. Computation of Disability Retirement Annuities

Subpart C of Part 844 sets forth rules concerning the computation of disability annuities. Disability annuities being on the day after the employee separates or pay ceases and the employee meets the requirements for title to an annuity, but in no case may an annuity begin before January 1, 1987, the effective date of FERS. For the first 12 months that a disability annuity is payable, the annuity is equal to 60 percent of the annuitant's highest 3-years' average pay. At the end of 12 months, the annuity becomes 40 percent of the retiree's "high-three" salary. During the first 12

months, if the retiree is also entitled to social security disability benefits, his or her annuity under FERS is reduced by the entire amount of the individual's "assumed" social security disability benefit, and by 60 percent of the "assumed" social security benefit after the first 12 months. The reduction applies only in months for which the individual is entitled to social security disability benefits. This "assumed" amount is equal to the amount of the social security benefit that would have been payable if the benefit had begun with the month in which the FERS disability annuity began (or was reinstated under Subpart D), increased by any FERS cost-of-living adjustments that were effective on and after the commencing date of the FERS annuity. This means that the 5-month waiting period required by the Social Security Act between the onset of the disabling condition and the commencement of benefit payments will be ignored in computing the assumed social security disability benefit.

When a disability annuitant reaches age 62, his or her annuity is redetermined as set forth in § 844.303. A normal retirement annuity is computed with respect to the annuitant, including credit for the period during which the disability annuity was payable, and adjusting the "high-three" average salary by FERS cost-of-living adjustments that were effective during the period or periods the disability annuity was payable. This redetermined annuity is compared to the disability annuity that has been reduced by the appropriate portion (i.e., either 100 percent or 60 percent) of the assumed social security disability benefit, and the lesser of the two amounts is payable beginning on the annuitant's 62nd birthday. As required by 5 U.S.C. 8452(b)(3), § 844.303(b)(1) specifies that, if the annuitant reaches 62 during the first year of disability, the reduced disability annuity used in this comparison cannot be greater than the reduced disability annuity that would be payable after the first 12 months of disability. Finally, as provided in § 844.303(b)(3), if the annuitant is not entitled to social security disability benefits and, therefore, his or her FERS disability annuity is not being reduced, it must be assumed for the sake of the redetermination at age 62 that the FERS annuity is being reduced by the assumed social security disability benefit. If this annuity, with the reduction by the appropriate portion of the hypothetical social security disability benefit, is less than the redetermined annuity described at the beginning of this paragraph, this

hypothetically reduced disability annuity is the amount that will actually be payable on and after the annuitant's 62nd birthday. Consequently, it is possible for a disability annuitant to experience a substantial reduction in income at age 62, particularly if the annuitant has no entitlement to social security benefits.

Section 844.304 provides that, regardless of any other provision, a disability annuity, after any social security offset has been applied, may not be less than a normal voluntary retirement annuity based on the annuitant's actual service (excluding any reduction for age).

Section 844.305 provides that a disability annuity will be computed under the rules for computing nondisability annuities if the annuity commences or is reinstated on or after the annuitant satisfies the age and service requirements for immediate voluntary retirement or reaches age 62.

### IV. Termination of Disability Annuities

Subpart D of Part 844 sets forth the conditions under which disability annuities are terminated and resumed or reinstated. Section 844.401 governs termination of a disability annuity because of the annuitant's recovery. OPM will also terminate the annuity if the annuitant refuses to cooperate with OPM's requests for information needed to evaluate his or her continuing entitlement to benefits. Annuity payments will be resumed if and when the individual provides the requested information demonstrating that he or she is still disabled.

Section 844.402 provides for terminating a disability annuity when the annuitant's earning capacity has been restored. Under 5 U.S.C. 8455(a)(2), the annuity of a disability annuitant under age 60 stops if his or her earning capacity is restored. By law, earning capacity is considered to be restored if "income of the annuitant from wages or self-employment or both" during a calendar year equals at least 80 percent of the "current rate of pay of the position occupied immediately before retirement." The disability annuity stops on the next June 30, or on reemployment in Federal service, whichever is earlier. These interim regulations define the rate of basic pay of the position from which the annuitant retired on disability, provide the means of updating the rate for comparison to income earned in future years, and define the term "income from wages or self-employment or both" for earning capacity determination purposes.



#### *A. Current Rate of Pay of the Position Occupied Immediately Before Retirement*

Basic pay is all pay subject to FERS withholdings and is defined by 5 U.S.C. 8401(4). It includes, for example, administratively uncontrollable overtime premium pay for firefighters and law enforcement officers and night shift differential for Federal Wage System employees.

Generally, the "current rate of pay of the position occupied immediately before retirement" is the rate of basic pay, as of December 31 of the year for which earning capacity is being determined, for the grade and step of the position the employee held on the date of separation from the employing agency. In determining the rate of pay of the position occupied immediately before retirement, the employing agency, at the time the disability retirement application is approved, will first determine the total rate of basic pay for the position held on the date of separation for retirement. This will include any additional basic pay authorized on that date for which FERS deductions are made (subject to the statutory limitation on the premium pay rate (the GS-10, step 1 rate) under 5 U.S.C. 5545(c) (1) and (2)). The total amount of the rate of basic pay on the date of separation will then be converted into a grade and step under the provisions of § 844.402(b).

#### *B. Disability Annuitants Whose Basic Pay Rates Do Not Equate to a Grade and Step in Their Pay Schedule*

(1) *Senior Executive Service employees and Merit Pay System employees.* For some employees, such as those in the Senior Executive Service or the Merit Pay System, basic pay rates usually do not equate to a grade and step in their pay schedule. In these cases, the regulations simply put the rate of pay at retirement at the next higher step if it falls between steps (see § 844.402(b)(2)). Then the grade and step will be updated the same way as for other employees. The grade and step OPM sets for this purpose will be used only in deciding whether an annuitant's earning capacity is restored.

(2) *Employees on retained pay.* Employees who have a retained pay rate may also have a rate of pay that does not equate to a specific grade and step. While under pay retention, the employee legally has the grade of the actual position occupied, but, based on a formula included in the law, receives a rate of pay above the highest rate for the grade of that position. Taking into account the fact that this rate may fall

under more than one grade in the pay schedule, the regulations set the grade in these cases at the grade nearest the actual grade of the position held, for purposes of determining the rate of pay of the position occupied immediately before retirement. When the grade has been set, the step then is set at the step above the employee's rate of basic pay, unless it exactly matches the rate for a step in that grade.

For example, using General Schedules rates in effect in 1986, OPM would set the grade and step of an employee retiring in 1986 from a GS-5 position with retained pay of \$27,105 at GS-9, step 9. (GS-9 is the closest grade to the employee's position within which the employee's retained rate falls. Step 9, at \$27,620, is the step above the retained rate of pay.) In future years, OPM can compare the retiree's income to the current rate of pay for GS-9, step 9, for any calendar year.

(3) *Employees on special pay rates.* Employees who retire from positions covered by special pay rates authorized under 5 U.S.C. 5303 are treated like employees on retained pay. In fixing the rate of pay at retirement, one must use the grade of the position occupied, unless the employee's actual rate of basic pay exceeds the highest rate payable for his or her grade. In such a case, the grade will be set at the next highest grade within which the actual rate of pay falls. The step will be set at the lowest step in that grade that equals or exceeds the employee's actual rate of basic pay. (See § 844.403(b)(2)).

#### *C. Updating the Rate of Pay of the Position Occupied Immediately Before Retirement*

Once the grade and step set as "the rate of pay of the position occupied immediately before retirement" is determined at the time the employee retires on disability, the regulations state that OPM will determine the rate in effect on December 31 of each future year for the designated grade and step. General pay increases, such as percentage adjustments in the General Schedule, are included to update the rate of pay. General increases in local wage grade pay schedules are also included. These two kinds of increases cover the vast majority of cases. Potential increases based on length of service and quality of performance or reclassification of position (such as promotions or within-grade increases), which the employee may have received if he or she had not retired but had continued working, are not included.

#### *D. Income for Earning Capacity Purposes: General Concept*

Because disability retirement is not a permanent retirement benefit for individuals under age 60, but protects the individual against the loss of earning capacity because of a disabling medical condition, the regulations base earning capacity determinations on the annuitant's ability to earn income from his or her personal work efforts actually rendered in the open labor market despite the disability (see § 844.402(c)). Consequently for determining restoration of earning capacity, "income" is calculated separately from "income" for Federal income tax or FICA (Federal Insurance Contributions Act) tax purposes. For example, while unearned income such as inheritances and interest on personal savings accounts are part of income for tax purposes, these kinds of income do not reflect an individual's earning capacity and, therefore, are not considered income for purposes of these regulations. Also, the use of either the Federal income tax or FICA tax law definitions of wages and net earnings provides numerous opportunities to adjust income that, while permitted under those laws, are not valid for determining whether the disability annuitant has demonstrated an ability to earn income.

#### *E. Definition of "income"*

"Income," for purposes of earning capacity, is the total of the gross amount of wages earned as an employee from one or more employers and earnings from self-employment during the calendar year for which the earning capacity determination is being made (see § 844.442(c)). Income is counted in the calendar year in which it is earned, even if receipt is deferred. In calculating an annuitant's total income, the regulations provide that losses in one self-employment endeavor do not offset income from another source, either wages earned from working in an employee/employer relationship or net earnings from another self-employed business (see § 844.442(c)). If an annuitant has demonstrated an ability to earn a salary from an employer and/or net earnings from one business that are equal to or greater than the 80-percent statutory limitation, that fact is not diminished by the failure to turn a profit while also engaged in a separate business.

#### *V. Resumption and Reinstatement of Terminated Disability Annuities*

Under the provisions governing reemployment of FERS annuitants in 5



U.S.C. 8468, if a disability annuitant is reemployed in any position in the Federal Government, his or her annuity terminates on the date of reemployment. To facilitate the employment of disability annuitants without prejudice to their benefits, if the reemployment ends within 12 months, OPM will resume the disability annuity automatically without requiring additional medical documentation. In these cases, the annuity will be resumed at the rate that would have been payable if the annuity had not been terminated. Usually this will be 40 percent of average pay unless the resumption occurs before the end of the 12th month after the annuity commenced.

This differs from the practice in cases where a disability annuity was terminated because of a medical finding of recovery or because the annuitant's earning capacity was restored. In these cases, if OPM makes a medical finding that the disability has recurred or determines that the individual has again lost his or her earning capacity, the annuity will be reinstated at the rate of 60 percent of average salary for the first 12 months after reinstatement. If the individual is also entitled to social security disability benefits during this period, the benefit is offset by 100 percent of the assumed social security disability benefit. At the end of the first 12 months after reinstatement, the annuity equals 40 percent of average pay, minus 60 percent of the assumed social security disability benefit if the individual is also entitled to a social security disability benefit. Reinstatement takes effect on the date of medical documentation showing that the disability has recurred or on January 1 of the year following the year in which earning capacity again fell below 80 percent of the current rate of basic pay of the position from which the individual retired.

It is important to distinguish between resumption and reinstatement of a disability annuity as described in the two preceding paragraphs. Section 8452(a)(1)(A)(i) of Title 5, United States Code, requires the annuity to be reinstated at the higher rate (60 percent of average pay) for 12 months when reinstatement follows a medical finding by OPM that the annuitant recovered from his or her disability and a subsequent finding that the disability recurred. No such findings will have been made under the circumstances set forth in § 844.405(a) (i.e., resumption of a disability annuity that was terminated because of Federal reemployment that ends within 12 months). The annuity will

have been terminated because all FERS annuities must terminate on Federal reemployment, and not because of a medical finding that the individual has recovered. The annuity will have been resumed automatically, based on termination of the reemployment within 12 months, and not on any medical finding that the disability has recurred. Under 5 U.S.C. 8452(a)(1)(A)(i), these cases can be treated differently from cases in which the annuity must be reinstated at the 60 percent rate because a new medical finding of disability has been made.

The need for a provision like § 844.405(a) is clear. It is important to encourage those disability annuitants who are able and motivated to seek reemployment in the Federal Government to do so without first requiring a medical finding by OPM that the individual has recovered from his or her disability. Moreover, if the individual becomes reemployed and finds within a reasonable period (12 months) that he or she is unable to continue working, we believe the disability annuity should be resumed without question. Requiring the individual to submit new medical documentation at his or her own expense demonstrating that he or she has again become disabled before the annuity can be restored would discourage many individuals from seeking reemployment in the first place. At the same time, it would be unreasonable to reinstate the annuity at the higher rate for 12 months in these cases, since this would create a serious potential for abuse. It would be fairly simple for a disability annuitant to obtain reemployment in any Federal job (not necessarily resembling the position from which he or she retired) and then to resign shortly thereafter in order to begin another 12-month period of annuity payments at the higher (60 percent) rate. In order to preclude this possibility, the annuity will be automatically resumed at the lower rate in these cases, unless the reemployment ends within 12 months after the disability annuity commenced.

An individual in these circumstances will, however, retain the option of presenting medical evidence, at the end of the Federal reemployment, which demonstrates that he or she has again become disabled. If OPM makes a new finding of disability based on this documentation, the individual will be entitled to have the disability annuity reinstated at the 60 percent rate for 12 months, at the end of which the annuity will drop back to 40 percent of average pay. In this way, the individual's right to

have the annuity reinstated at the higher rate will be protected, provided he or she accepts the burden of proving that he or she has again become disabled.

#### *Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date*

Under 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. OPM must issue regulations to implement an entire new retirement system that was effective on January 1, 1987. There is an urgent need for firm rules on disability retirement to deal with applications from employees who were automatically covered by FERS on January 1, 1987. In addition, clear rules must be in place to allow preparation of materials and worldwide distribution of them to employees who are eligible to elect FERS coverage during the "open season" between July 1 and December 31, 1987. These tasks, along with the need to prepare, publish, and distribute essential forms and informational materials, make the publication of proposed rules impracticable.

#### *E.O. 12291, Federal Regulation*

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

#### *Regulatory Flexibility Act*

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will affect only disability retirement benefits for Federal employees.

#### *List of Subjects in 5 CFR Part 844*

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Constance Horner,  
Director.

Accordingly, OPM is amending Title 5, Code of Federal Regulations, to add a new Part 844 to read as follows:

### **PART 844—FEDERAL EMPLOYEES' RETIREMENT SYSTEM—DISABILITY RETIREMENT**

#### **Subpart A—General Provisions**

Sec.	
844.101	Purpose.
844.102	Definitions.
844.103	Eligibility.



Sec.

844.104 Administrative review of OPM decisions.

844.105 Relationship to workers' compensation.

**Subpart B—Applications for Disability Retirement**

844.201 General requirements.

844.202 Agency-filed disability retirement applications.

844.203 Supporting documentation.

**Subpart C—Computation of Disability Annuity**

844.301 Commencing date of a disability annuity.

844.302 Computation of disability annuity before age 62.

844.303 Redetermination of disability annuity at age 62.

844.304 Minimum disability annuity.

844.305 Computation of disability annuity for those otherwise eligible to retire.

**Subpart D—Termination and Reinstatement of Disability Annuity**

844.401 Recovery from disability.

844.402 Restoration of earning capacity.

844.403 Reemployment of disability annuitants.

844.404 Annuity rights after a disability annuity terminates.

844.405 Resumption and reinstatement of disability annuity.

Authority: 5 U.S.C. 8461.

**Subpart A—General Provisions****§ 844.101 Purpose.**

This part establishes the requirements under the Federal Employees' Retirement System (FERS) for eligibility to receive a disability annuity, application procedures for disability annuities, rules for computing a disability annuity, and the conditions and procedures under which a disability annuity is terminated and reinstated.

**§ 844.102 Definitions.**

In this part—

"Accommodation" means a reasonable adjustment made to an employee's job or work environment that enables the employee to perform the duties of the position. Accommodation may include modifying the worksite; adjusting the work schedule; restructuring the job, obtaining or modifying equipment or devices; providing interpreters, readers, or personal assistants; and retraining the employee.

"Basic pay" means the pay an employee receives that is subject to deductions under FERS.

"Commuting area" has the same meaning given the term "local commuting area" in § 351.203 of this chapter.

"Disabled" and "disability" mean unable or inability, because of disease

or injury, to render useful and efficient service in the employee's current position.

"FERS" means the Federal Employees' Retirement System established under chapter 84 of Title 5, United States Code.

"Medical condition" means a health impairment resulting from a disease or injury, including a psychiatric disease. This is the same definition of "medical condition" that is found in § 339.102 of this chapter.

"Medical documentation" has the same meaning given this term in § 339.102 of this chapter. Medical documentation supplied under this part must be obtained from a physician.

"Military reserve technician" has the same meaning given this term in 5 U.S.C. 8401(30).

"OPM" means the Office of Personnel Management.

"Permanent position" means an appointment without time limitation.

"Physician" has the same meaning given this term in § 339.102 of this chapter.

"Qualified for reassignment" means able to meet the minimum requirements for the grade and series of the vacant position in question. "Same grade or pay level" means able to meet the minimum requirements for the grade and series of the vacant position in question.

"Same grade or pay level" means, in regard to a vacant position within the same pay system as the employee currently occupies, the same grade and an equivalent amount of basic pay. A position under a different pay system or schedule is at the same pay level if the representative rate, as defined in § 532.401 of this chapter, equals the representative rate of the employee's current position.

"Useful and efficient service" means (a) acceptable performance of the critical or essential elements of the position; and (b) satisfactory conduct and attendance.

"Vacant position" means an unoccupied position of the same grade or pay level and tenure for which the employee is qualified for reassignment that is located in the same commuting area and is serviced by the same appointing authority of the employing agency. The vacant position must be full time, unless the employee's current position is less than full time, in which case the vacant position must have a work schedule of no less than that of the current position. In the case of an employee of the United States Postal Service, a vacant position does not include a position in a different craft or a position to which reassignment would be inconsistent with the terms of a

collective bargaining agreement covering the employee.

**§ 844.103 Eligibility.**

(a) Except as provided in paragraph (c) of this section, an individual must meet the following requirements in order to receive a disability annuity:

(1) The individual must have completed at least 18 months of civilian service that is creditable under FERS;

(2) The individual must, while employed in a position subject to FERS, have become disabled because of a medical condition, resulting in a deficiency in performance, conduct, or attendance, or if there is no such deficiency, the disabling medical condition must be incompatible with either useful and efficient service or retention in the position;

(3) The disabling medical condition must be expected to continue for at least 1 year from the date the individual became disabled;

(4) Accommodation of the disabling medical condition in the position held must be unreasonable; and

(5) The individual must not have declined an offer of reassignment to a vacant position.

(b) The employing agency must consider a disability applicant for reassignment to any vacant position. The agency must certify to the Office of Personnel Management (OPM) either that there is no vacant position or that, although it made no offer of reassignment, it considered the individual for a vacant position. If an agency offers a reassignment and the individual declines the offer, the individual may appeal the agency's determination that the individual is not disabled for the position in question to the Merit Systems Protection Board under 5 U.S.C. 7701.

(c)(1) Paragraphs (a) (2) through (5) of this section do not apply to a military reserve technician who retires under 5 U.S.C. 8457.

(2) An individual who separates from employment as a military reserve technician under circumstances set forth in 5 U.S.C. 8457(a)(1) after reaching age 50 and completing 25 years of service is not entitled to a disability annuity under this part.

**§ 844.104 Administrative review of OPM decisions.**

(a) Any individual whose rights or interests under FERS are affected by an initial decision of OPM may request OPM to review its initial decision. A request for reconsideration must be made in writing and must be received by OPM within 30 calendar days from the



date of the initial decision. A decision will be considered an initial decision when rendered by OPM in writing and stating the right to request reconsideration.

(b) An individual whose rights or interests under FERS are affected by a final decision of the Associate Director for Retirement and Insurance of OPM or the Associate Director's representative may request the Merit Systems Protection Board to review such decision in accord with procedures prescribed by the Board.

#### **§ 844.105 Relationship to workers' compensation.**

(a) Except as provided in paragraph (b) of this section, an individual who is eligible for both an annuity under Part 842 or 844 of this chapter and compensation for injury or disability under subchapter I of chapter 81 of Title 5, United States Code (other than a lump-sum payment under 5 U.S.C. 8135 or a scheduled award under 5 U.S.C. 8107(c)), covering the same period of time must elect to receive either the annuity or compensation.

(b) Notwithstanding the provisions of paragraph (a) of this section, an individual may concurrently receive an annuity based on the individual's service under Part 842 or 844 of this chapter and a benefit under subchapter I of chapter 81 of Title 5, United States Code, on account of the death of another individual. An individual may also receive an annuity under Part 843 of this chapter and compensation for injury or disability to himself or herself under such subchapter I covering the same period of time.

(c) An individual who elects to receive compensation payments under paragraph (a) of this section and who has not received a refund of contributions under § 843.202 retains the right to elect to receive an annuity under Part 842 or 844, as the case may be, in the event that the individual's compensation payments cease or are reduced.

#### **Subpart B—Applications for Disability Retirement**

##### **§ 844.201 General requirements.**

(a) An application for disability retirement must be filed with the Office of Personnel Management (OPM), on a form prescribed by OPM, within one year after the employee or Member separates from service. An employee or Member who has not yet separated must file the application through the employing agency. OPM may waive the time limit if the employee or Member was mentally incompetent on the date of

separation or within 1 year thereafter, in which case the individual or his or her representative may file the application with OPM within 1 year after the date the individual regains competency or a court appoints a fiduciary, whichever is earlier. OPM may accept, as an informal claim, an application for annuity submitted in an incorrect form, or on a correct form incorrectly or incompletely filled out.

(b)(1) Before an application for disability retirement under this part can be approved, the applicant must provide OPM with—

(i) Satisfactory evidence that the applicant has filed an application for disability insurance benefits under section 223 of the Social Security Act; or

(ii) An official statement from the Social Security Administration that the individual is not insured for disability insurance benefits as defined in section 223(c)(1) of the Social Security Act.

(2) A disability retirement application under this part will be dismissed when OPM is notified by the Social Security Administration that the application referred to in paragraph (b)(1)(i) of this section has been withdrawn. All rights to an annuity under this part terminate upon withdrawal of an application for social security disability benefits.

(c) An application for disability retirement will not preclude or delay any other appropriate personnel action by the employing agency.

##### **§ 844.202 Agency-filed disability retirement applications.**

(a) *Basis for filing an application for an employee.* An agency must file an application for disability retirement of an employee who has 18 months of Federal civilian service when all of the following conditions are met:

(1) The agency has issued a decision to remove the employee;

(2) The agency concludes, after its review of medical documentation, that the cause for unacceptable performance, attendance, or conduct is disease or injury;

(3) The employee is institutionalized, or the agency concludes, based on a review of medical and other information, that the employee is incapable of making a decision to file an application for disability retirement;

(4) The employee has no personal representative or guardian; and

(5) The employee has no immediate family member who is willing to file an application on his or her behalf.

(b) *Agency procedures.* (1) When an agency issues a decision to remove an employee and not all of the conditions described in paragraph (a) of this section have been satisfied, but the

removal is based on reasons apparently caused by a medical condition, the agency must advise the employee in writing of his or her possible eligibility for disability retirement.

(2) If all of the conditions described in paragraph (a) of this section have been met, the agency must inform the employee in writing at the same time it informs the employee of its removal decision, or at any time before the separation is effected, that—

(i) The agency is submitting a disability retirement application on the employee's behalf to OPM;

(ii) The employee may review any medical information in accordance with § 294.106(d) of this chapter; and

(iii) The action does not affect the employee's right to submit a voluntary application for disability retirement or any other retirement benefit to which the employee is entitled under FERS.

(3) When an agency submits an application for disability retirement to OPM on behalf of an employee, it must provide OPM with copies of the decision to remove the employee, the medical documentation, and any other documents needed to show that the cause for removal results from a medical condition. Following separation, the agency must provide OPM with a copy of the documentation of the separation.

(c) *OPM procedures.* (1) OPM will not act on any application for disability retirement filed by an agency on behalf of an employee until it receives the appropriate documentation of the separation. When OPM receives a complete application for disability retirement under this section, it will notify the former employee that it has received the application and that he or she may submit medical documentation. OPM will determine entitlement to disability benefits under § 844.203.

(2) OPM will cancel any disability retirement when a final decision of an administrative authority or court reverses the removal action and orders the reinstatement of an employee to the agency rolls.

##### **§ 844.203 Supporting documentation.**

(a) An individual or agency filing an application for disability retirement is responsible for providing OPM with the evidence described in § 844.201(b)(1), as well as whatever documentation OPM requires in order to establish that the individual meets the eligibility requirements set forth in § 844.103. The documentation must be provided in a form prescribed by OPM. Failure to submit the documentation required is grounds for dismissing the application. It is also the responsibility of the disability



annuitant to obtain and submit evidence OPM requires to show continuing entitlement to disability benefits. Unless OPM orders an examination by a physician of its choice under paragraph (b) of this section, the cost of providing medical documentation rests with the applicant or disability annuitant.

(b) OPM will offer the applicant a medical examination only when it determines that an independent evaluation of medical evidence is needed in order to make a decision regarding an application for a disability annuity or a disability annuitant's entitlement to continuing benefits. The medical examination will be conducted by a medical officer of the United States or a qualified physician or board of physicians designated by OPM. The applicant's refusal to submit to an examination is grounds for dismissal of the application or termination of payments to an annuitant.

(c)(1) OPM will review the documentation submitted under paragraph (a) of this section to determine whether the individual has met the eligibility requirements set forth in § 844.103. OPM will issue its decision in writing to the individual and to the employing agency. The decision will include a statement of OPM's findings and conclusions and an explanation of the applicant's right to request reconsideration or MSPB review under § 844.104.

(2) OPM may rescind a decision to allow an application for disability retirement at any time if OPM determines that the original decision was erroneous due to fraud, misstatement of fact, or upon the acquisition of additional medical documentation. OPM will provide the individual and the employing agency with written notification of the rescission, including a statement of OPM's findings and conclusions and an explanation of the individual's right to request reconsideration or MSPB review under § 844.104.

(d) Subject to 5 U.S.C. 552a, any supporting documentation provided to OPM under this section may be shared with the Social Security Administration and the Office of Workers' Compensation Programs of the U.S. Department of Labor.

#### Subpart C—Computation of Disability Annuity

##### § 844.301 Commencing date of disability annuity.

A disability annuity under this part commences on the day after the employee separates or the day after pay

ceases and the employee meets the requirements for title to an annuity.

##### § 844.302 Computation of disability annuity before age 62.

(a) For the purposes of this subpart, the assumed social security disability benefit is the benefit determined under section 223 of the Social Security Act, with respect to an annuitant—

(1) As if the annuitant were insured for disability benefits, as determined under section 223(c)(1) of the Social Security Act, in the month in which the annuity under this part commenced or was reinstated under § 844.405;

(2) As if the annuitant became disabled as defined in section 223(d) of the Social Security Act on the date the annuity under this part commenced or was reinstated under § 844.405 (unless the annuitant actually became disabled before the annuity commenced);

(3) Without regard to the 5-month waiting period requirement defined in section 223(c)(2) of the Social Security Act;

(4) Including, where appropriate, a reduction under section 224 of the Social Security Act, based on the amount of the disability annuity under this subpart without regard to paragraphs (b)(2) and (c)(2) of this section; and

(5) Adjusted by each cost-of-living increase effective under 5 U.S.C. 8462 on and after the commencing date or reinstatement date of the annuity under this part.

(b)(1) Except as otherwise provided in this part, the annuity payable under this subpart until the end of the 12th month beginning after the annuity commences is equal to 60 percent of the annuitant's average pay.

(2) For months for which the annuitant is also entitled to a social security disability benefit, the amount computed under paragraph (b)(1) of this section is reduced by 100 percent of the annuitant's assumed social security disability benefit.

(c)(1) Except as otherwise provided in this part, the annuity under this subpart after the period described in paragraph (b)(1) of this section is equal to 40 percent of the annuitant's average pay.

(2) For months after the period described in paragraph (b)(1) of this section for which the annuitant is also entitled to a social security disability benefit, the amount computed under paragraph (c)(1) of this section is reduced by 60 percent of the annuitant's assumed social security disability benefit.

##### § 844.303 Redetermination of disability annuity at age 62.

Except as provided in §§ 844.304 and 844.305, effective on the annuitant's 62nd birthday, the rate of annuity payable to a disability annuitant will be the lesser of the amount computed under paragraph (a) of this section or the amount computed under paragraph (b) of this section.

(a) The amount under this paragraph is the amount of an annuity computed with respect to the annuitant under 5 U.S.C. 8415 (including subsection (g) of that section), including credit for the period or periods before the annuitant's 62nd birthday during which the annuitant was entitled to a disability annuity. The average pay used in computing the annuity under 5 U.S.C. 8415 is adjusted by all cost-of-living increases effective under 5 U.S.C. 8462(b) during the period or periods before the annuitant's 62nd birthday during which the annuitant was entitled to a disability annuity under this part.

(b)(1) The amount determined under this paragraph with respect to an annuitant whose annuity, as of the day before the annuitant's 62nd birthday, is being reduced under § 844.302(b)(2) is equal to the lesser of—

(i) The rate of annuity then payable under § 844.302(b); or

(ii) The rate of annuity that would be payable under § 844.302(c) at the expiration of the 12-month period described in § 844.302(b)(1).

(2) The amount determined under this paragraph with respect to an annuitant whose annuity, as of the day before the annuitant's 62nd birthday, is being reduced under § 844.302(c)(2) is equal to the amount then payable under § 844.302(c).

(3) The amount determined under this paragraph with respect to an annuitant whose annuity, as of the day before the annuitant's 62nd birthday, is not being reduced under § 844.302 (b)(2) or (c)(2) is equal to the amount that would be applicable under paragraph (b) (1) or (2) of this section if the annuity were being reduced under § 844.302 (b)(2) or (c)(2), as appropriate.

##### § 844.304 Minimum disability annuity.

Notwithstanding any other provision of this part, an annuity payable under this part cannot be less than the amount of an annuity computed under 5 U.S.C. 8415 (excluding subsection (f) of that section) based on the annuitant's service.



**§ 844.305 Computation of disability annuity for those otherwise eligible to retire.**

Notwithstanding any other provision of this part, an annuity payable under this part will be computed under 5 U.S.C. 8415 if it commences or is reinstated under § 844.405 (b) or (c) of this part on or after—

(a) The annuitant has satisfied the age and service requirements for retirement under 5 U.S.C. 8412 (a) through (f); or

(b) The annuitant has reached age 62.

**Subpart D—Termination and Reinstatement of Disability Annuity**

**§ 844.401 Recovery from disability.**

(a) A disability annuitant may request medical reevaluation at any time. OPM may reevaluate the medical condition of disability annuitants age 60 or over only on their own request.

(b) When OPM determines on the basis of medical documentation or other evidence that a disability annuitant has recovered from the disability, OPM will terminate the annuity effective on the first day of the month beginning 1 year after the date of the medical documentation or other evidence showing recovery.

**§ 844.402 Restoration of earning capacity.**

(a) *Earning capacity determinations.* If a disability annuitant is under age 60 on December 31 of any calendar year and his or her income from wages or self-employment or both during that calendar year equals at least 80 percent of the current rate of basic pay of the position occupied immediately before retirement, the annuitant's earning capacity is considered to be restored. The disability annuity will terminate on the June 30 after the end of the calendar year in which earning capacity is restored. When an agency reemploys a disability annuitant whose earning capacity is restored at any grade or rate of pay within the 180-day waiting period pending termination of the disability retirement benefit, OPM will terminate the annuity effective on the date of reemployment.

(b) *Current rate of basic pay for the position occupied immediately before retirement.* (1) A disability annuitant's income for a calendar year is compared to the gross annual rate of basic pay in effect on December 31 of that year for the position occupied immediately before retirement. The income limitation for most disability annuitants is based on the rate for the grade and step that reflects the total amount of basic pay (both the grade and step and any additional basic pay) in effect on the date of separation from the agency for

disability retirement. Additional basic pay is included subject to the premium pay restrictions of 5 U.S.C. 5545 (c)(1) and (c)(2).

(2) In the case of an annuitant whose basic pay rate on the date determined under paragraph (b)(1) of this section did not match a specific grade and step in the pay schedule—

(i) For those retiring from a Senior Executive Service position, a merit pay position, a position for which a special pay rate is authorized (except as provided in paragraph (b)(2)(ii) of this section), or any other position in which the rate of basic pay is not equal to a grade and step in a pay schedule, the grade and step will be established for this purpose at the lowest step in the pay schedule grade that is equal to or greater than the actual rate of basic pay payable.

(ii) For those retiring with a retained rate of basic pay or from a position for which a special pay rate is in effect but whose rate of basic pay exceeds the highest rate payable in the pay schedule grade applicable to the position held, the grade is established for this purpose at the highest grade in the schedule that is closest to the grade of the position held and within which the amount of the retained pay falls. The step is established for this purpose at the lowest step in that grade that equals or exceeds the actual rate of pay payable.

(3) For annuitants retiring from the United States Postal Service, only cost-of-living allowances subject to FERS deductions are included in determining the current rate of basic pay of the position held at retirement.

(c) *Income.* (1) Earning capacity for the purposes of this section is demonstrated by an annuitant's ability to earn post-retirement income in exchange for personal services or a work product, or as a profit from one or more businesses wholly or partly owned by the disability annuitant and in the management of which the annuitant has an active role. Income for the purposes of this section is not necessarily the same as income for the purposes of the Internal Revenue Code.

(2) Income earned from one source is not offset by losses from another source. Income earned as wages is not reduced by a net loss from self-employment. The net income from each self-employment endeavor is calculated separately, and the income earned as net earnings from one self-employment endeavor is not reduced by a net loss from another self-employment endeavor. Thus, a net loss from one endeavor is considered to be a net income of zero, and the net incomes from each separate self-employment endeavor are added together to

determine the total amount of income from self-employment for a calendar year.

(3) Income is counted in the calendar year in which it is earned, even though receipt may be deferred.

(d) *Requirement to report income.* All disability annuitants who, on December 31 of any calendar year, are under age 60 must report to OPM their income from wages or self-employment or both for that calendar year. Each year as early as possible, OPM will send a form to annuitants to use in reporting their income from the previous calendar year. The form specifies the date by which OPM must receive the report. OPM will determine entitlement to continued annuity on the basis of the report. If an annuitant fails to submit the report, OPM may stop annuity payments until it receives the report.

**§ 844.403 Reemployment of disability annuitants.**

An agency may reemploy a disability annuitant in any position for which the annuitant is qualified. The employing agency must notify OPM of the reemployment. The disability annuity terminates on the date of reemployment in the Government.

**§ 844.404 Annuity rights after a disability annuity terminates.**

(a) When a disability annuity is terminated because of recovery or restoration of earning capacity and the individual is not reemployed in the Government, the individual is entitled to an annuity—

(1) Under 5 U.S.C. 8414(b) if the individual—

(i) Is at least age 50 when the disability annuity ceases and had 20 or more years of service at the time of retiring for disability; or

(ii) Has 25 or more years of service at the time of retiring for disability, regardless of age; or

(2) Under 5 U.S.C. 8412(g) if the individual is at least the minimum retirement age applicable under 5 U.S.C. 8412(h) when the disability annuity ceases and had 10 or more years of service at the time of retiring for disability.

(b) When a disability annuitant whose annuity was terminated because of Federal reemployment is separated and meets the age and service requirements for immediate retirement under 5 U.S.C. 8412 or 8414, the individual is entitled to an annuity computed under 5 U.S.C. 8415.



**§ 844.405 Resumption and reinstatement of disability annuity.**

(a) *Resumption of annuity.* (1) Except as provided in § 844.404(b) and paragraph (b)(2) of this section, when a disability annuitant whose annuity was terminated under § 844.403 on the basis of Federal reemployment is separated within 1 year after becoming reemployed, OPM will resume the disability annuity beginning on the first day after separation. Except as provided in §§ 844.304 and 844.305, the annuity will be resumed at the rate provided under § 844.302(c) unless the reemployment ends within the 12-month period described in § 844.302(b)(1), in which case the annuity will be resumed at the rate provided under § 844.302(b) until the end of the 12-month period. The resumed rate will be increased by any adjustment that was effective under 5 U.S.C. 8462 during the period of reemployment, unless a higher annuity rate is obtained by simply adjusting the individual's average salary to reflect his or her earnings during reemployment.

(2) When an individual whose annuity payments were terminated because of failure to submit medical or earnings information requested by OPM provides evidence that demonstrates to OPM's satisfaction that the individual is disabled or that the individual's earning capacity has not been restored, OPM will resume the annuity on the date of the medical documentation or other evidence showing that the individual is still entitled to a disability annuity. Except as provided in §§ 844.304 and 844.305, the annuity will be resumed at the rate provided under § 844.302(c) unless the resumption occurs within the 12-month period described in §§ 844.302(b)(1), in which case the annuity will be resumed at the rate provided under § 844.302(b) until the end of the 12-month period.

(b) *Reinstatement of annuity based on new evidence of disability.* (1) When a disability annuitant whose annuity was terminated because the annuitant was found recovered on the basis of medical evidence is not reemployed in the Government and, based on current medical documentation, OPM finds that the disability has recurred, OPM will reinstate the disability annuity as provided in paragraph (d) of this section. The right to the reinstated annuity begins on the date of the medical documentation showing that the disability has recurred, or if the medical documentation clearly shows that the disability recurred on an earlier date, the annuity will be reinstated on that earlier date.

(2) If a disability annuitant whose annuity is terminated on the basis of

Federal reemployment provides, when the reemployment ends, medical documentation or other evidence that demonstrates to OPM's satisfaction that the individual has again become disabled, the disability annuity will be reinstated at the rate provided in paragraph (d) of this section, regardless of the duration of the Federal reemployment, effective on the day after the reemployment ends.

(c)(1) *Reinstatement of annuity based on new evidence of loss of earning capacity.* OPM will reinstate the disability annuity as provided in paragraph (d) of this section when a disability annuitant whose annuity was terminated under § 844.402(a)—

(i) Is not reemployed in the Government;

(ii) Has not recovered from the disability for which retired; and

(iii) Again loses his or her earning capacity, as determined by OPM.

(2) The reinstated annuity is payable from January 1 of the year following the calendar year in which earning capacity was lost. Earning capacity is lost if, during any calendar year, the individual's income from wages or self-employment or both is less than 80 percent of the current rate of basic pay of the position held at retirement.

(d) Except as provided in §§ 844.304 and 844.305, a disability annuity reinstated under paragraph (b) or (c) of this section is paid at the rate provided under § 844.302(b) until the end of the 12th month beginning after the annuity is reinstated. Thereafter, the rate determined under § 844.302(c) is payable.

(e) Notwithstanding paragraphs (b) and (c) of this section, an annuity may not be reinstated under this section if the individual is receiving an annuity under Part 842 of this chapter.

[FR Doc. 88-19854 Filed 8-30-88; 8:45 am]  
BILLING CODE 6325-01-M

**DEPARTMENT OF JUSTICE****Immigration and Naturalization Service****8 CFR Part 299**

[INS Number: 1045-88]

**Display of Control Numbers**

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** A new § 299.5 is being added to 8 CFR Part 299.5. The new section, titled, Display of Control Numbers, will allow the Immigration and

Naturalization Service (Service), to compile, in one centralized location within its regulations, a listing of its current public use forms and their respective control numbers as assigned by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The consolidated identification of public use forms will enable both Service officials and the public to easily identify those public use forms in current use by the Immigration and Naturalization Service.

**DATE:** August 31, 1988.

**FOR FURTHER INFORMATION CONTACT:** Sharon A. Andrade, Management Analyst, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, (202) 633-3049.

**SUPPLEMENTARY INFORMATION:** A new § 299.5 is being added to 8 CFR Part 299 in order that the Immigration and Naturalization Service's regulations might list, in one specific area, all Public Use Forms along with their respective OMB control numbers. This addition to Part 299 is being made as a matter of convenience and efficiency to both the Service and the public in the identification of public use forms which are cited throughout 8 CFR. These technical changes simply compile all public use forms and corresponding control number and list them in one specific section of Part 299. Public participation in this regulatory change, therefore, is unnecessary, as the identification of these forms in a separate Section of 8 CFR is merely a change in the way the Service organizes and presents materials in 8 CFR.

The Immigration and Naturalization Service is invoking the exception to the notice and comment rulemaking procedures established by the Administrative Procedures Act under 5 U.S.C. 553 (b) (A) and (d).

In accordance with 5 U.S.C. 605 (b), the Commissioner of Immigration and Naturalization Service certifies that this rule will not have a significant economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

**List of Subjects in 8 CFR Part 299**

Aliens, Government publications, Reporting and recordkeeping requirements.

Accordingly, Part 299, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:



**PART 299—IMMIGRATION FORMS**

1. The authority citation for Part 299 is revised to read as follows:

Authority: 66 Stat. 173; 8 U.S.C. 1103.

2. A new § 299.5 is added to read as follows:

**§ 299.5 Display of control numbers.**

The following listing includes those Immigration and Naturalization Service public use forms which are cited for use

throughout Title 8. The Information collection requirements contained in this title have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The form numbers, titles, and OMB control numbers read as follows:

INS form No.	INS form title	Currently assigned OMB control No.
AR-4	Alien Registration Fingerprint Chart	1115-0002
AR-11	Alien's Change of Address Card	1115-0003
G-27	Request for Representation Before the BIA and I&N Service	1115-0026
G-79A	Data Relating to Beneficiary of Private Bill	1115-0044
G-868	Immigration Reform and Control Act of 1986 Questionnaire to solicit public input for INS Implementation Plans	1115-0124
G-146	Nonimmigrant Checkout Letter	1115-0075
G-325	Biographic Information	1115-0086
G-340	Report of Alien Person Institutionalized	1115-0050
G-639	Freedom of Information/Privacy Act Request	1115-0087
G-641	Application for Verification of Information from INS Records	1115-0088
G-767	Civilian Complaint Form English/Spanish	1115-0103
G-777	Supplemental Qualifications Statement Immigration Inspector, GS 1818-5	1115-0107
G-845	Document Verification Request	1115-0122
I-9	Employment Eligibility Verification	1115-0136
I-17	Petition for Approval of School for Attendance by Nonimmigrant Students	1115-0070
I-20AB	Certificate of Eligibility for Nonimmigrant (F-1) student status for Academic & Language Study	1115-0021
I-120ID	I-120ID	1115-0051
I-120MN	Verification of Eligibility for Nonimmigrant (M-1) student status for Vocational Students	1115-0051
I-43	Baggage and Personal Effects of Detained Alien	1115-0063
I-68	Canadian Border Boat Landing Permit	1115-0085
I-71	Revalidation Letter	1115-0058
I-90	Application by lawful permanent resident for an alien registration receipt card, Form I-551	1115-0004
I-92	Aircraft/Vessel Report	1115-0078
I-94	Arrival-Departure Record	1115-0077
I-94T	Arrival-Departure Record (Transit without VISA)	1115-0139
I-95AB	Crewman's Landing Permit	1115-0040
I-102	Application for Nonimmigrant Alien for replacement of arrival document	1115-0079
I-104	Alien Address Report Card	1115-0115
I-126	Report of status by Treaty Trader or Investor	1115-0023
I-129B	Petition to classify nonimmigrant as temporary worker or trainee	1115-0038
I-129F	Petition to classify status of alien fiancée for issuance of a nonimmigrant VISA	1115-0071
I-129L	Petition to Employ Intracompany Transferee	1115-0127
I-129S	Intracompany Transferee Certification of Eligibility	1115-0128
I-130	Petition to classify status of alien relative for issuance of immigrant VISA	1115-0054
I-131	Application for issuance of permit to reenter the U.S.	1115-0005
I-134	Affidavit of support	1115-0062
I-140	Petition to classify preference status of alien on basis of profession or occupation	1115-0061
I-175	Application for nonresident alien's Canadian Border Crossing Card	1115-0047
I-190	Application for nonresident alien's Mexican Border Crossing Card	1115-0019
I-191	Application for advance permission to return to unrelinquished domicile	1115-0032
I-192	Application for advance permission to enter as nonimmigrant	1115-0028
I-193	Application for waiver of passport and/or VISA	1115-0042
I-212	Application for permission to reapply for admission into the U.S. after deportation or removal	1115-0099
I-243	Application for removal	1115-0020
I-246	Application for stay of deportation	1115-0055
I-256A	Application for suspension of deportation	1115-0025
I-259A	Agreement by Transportation line to assume responsibility for removal of aliens	1115-0036
I-287AB	Special care and attention for alien	1115-0043
I-352A	Immigration Bond	1115-0085
I-356	Request for cancellation of public charge bond	1115-0046
I-360	Petition to classify P.L. 97-359 Amerasian as a child, son or daughter of a U.S. citizen	1115-0117
I-361	Affidavit of financial support and intent to petition for legal custody for P.L. 97-359 Amerasian	1115-0118
I-363	Request to enforce affidavit of financial support and intent to petition for legal custody for P.L. 97-359 Amerasian	1115-0116
I-408	Application to pay off or discharge alien crewman	1115-0073
I-418	Passenger List-Crew List	1115-0083
I-438	Departure information card	1115-0080
I-485	Application for status as permanent resident	1115-0053
I-485A	Application by Cuban Refugee for permanent residence	1115-0067
I-485C	Application for creation of a record of lawful admission for an Indochina refugee	1115-0089
I-488	Affidavit of witness	1115-0034
I-506	Application for change of nonimmigrant status	1115-0033
I-508A	Waiver of rights, privileges, exemptions, and immunities	1115-0037
I-510	Guarantee of payment	1115-0029
I-515	Notice to student or exchange visitor admitted without I-20 or IAP-66	1115-0068
I-526	Request for determination that prospective immigrant is an investor	1115-0081
I-538	Application by nonimmigrant students for extension of stay, school transfer, and permission to accept or continue employment or practice training	1115-0060
I-539	Application to extend time of temporary stay	1115-0093
I-566	Application for employment by a spouse or unmarried son or daughter of G-4 official	1115-0090



INS form No.	INS form title	Currently assigned OMB control No.
I-570	Application for issuance of refugee travel document	1115-0084
I-589	Request for asylum in the U.S.	1115-0086
I-590	Registration for classification as refugee (section 207, I&N Act)	1115-0057
I-591	Assurance by a U.S. sponsor in behalf of an applicant for refugee status	1115-0056
I-600	Petition to classify orphan as an immediate relative	1115-0049
I-600A	Petition to classify orphan as an immediate relative/Application for advance processing of orphan petition	1115-0049
I-601	Application for waiver of grounds of excludability	1115-0048
I-602	Application by refugee for waiver of grounds of excludability	1115-0098
I-612	Application for waiver of the foreign residence requirement	1115-0059
I-643	Health and Human Services Statistical Data	1115-0104
I-644	Supplementary statement for graduate medical trainees	1115-0108
I-687	Application for status as Temporary Residence	1115-0133
I-690	Waiver of Exclusion	1115-0132
I-693	Medical Examination of aliens seeking adjustment of status	1115-0134
I-694	Notice of Appeal	1115-0135
I-695	Application of Temporary Replacement Card	1115-0129
I-697	Changes of Address Notice	1115-0130
I-700	Application for status of temporary status	1115-0131
I-705	Affidavit confirming seasonal agricultural employment of an applicant for temporary residence status	1115-0137
I-721	Student Status Form/Student Listing	1115-0119
I-730	Refugee/Asylum Relative Petition	1115-0121
I-735	Special agricultural workers program pre-application claim to eligibility	1115-0126
I-736	Guam Visa Waiver Information	1115-0141
I-751	Joint petition to remove the conditional basis of alien's permanent resident status	1115-0145
I-752	Application for waiver of requirement to file joint petition for removal of conditions	1115-0146
I-760	Guam Visa Waiver Agreement	1115-0140
I-772	Declaration of Intending Citizen	1115-0138
	User Fee	1115-0142
N-14A	Arrival Information	1115-0082
N-25	Request for verification of Naturalization	1115-0007
N-300	Application to file declaration of intention	1115-0008
N-400	Application to file petition for naturalization	1115-0009
N-400B	Supplement to application to file petition for naturalization	1115-0031
N-402	Application to file petition for naturalization on behalf of child	1115-0010
N-422	Form letter re: Information from selective service file	1115-0011
N-426	Request for certification of military or naval service	1115-0022
N-430	Request that Applicant for Naturalization appear for Interview	1115-0064
N-445	Questionnaire submitted by Petitioner at Final Hearing	1115-0052
N-445B	Notice of Final Naturalization Hearing (Children)	1115-0076
N-455	Application for Transfer of Petition for Naturalization	1115-0035
N-458	Application to Correct Certification of Naturalization	1115-0030
N-470	Application to Preserve Residence for Naturalization Purpose	1115-0014
N-565	Application for a New Naturalization or Citizenship Paper	1115-0015
N-577	Application for a special certificate of naturalization to obtain recognition as a citizen of the U.S. by a foreign state	1115-0016
N-600	Application for certification of citizenship	1115-0018
N-610	Application for clarification of status by members of the Texas band of Kickapoo Indians (P.L. 97-429 of 1-8-83)	1115-0114

Dated: July 8, 1988.

Elizabeth Chase MacRae,  
Associate Commissioner, Information  
Systems.

[FR Doc. 88-19801 Filed 8-30-88; 8:45 am]

BILLING CODE 4410-10-M

[INS Number: 1115-83]

**8 CFR Parts 299 and 499****Immigration Forms and Nationality  
Forms****AGENCY:** Immigration and Naturalization  
Service, Justice.**ACTION:** Final rule.**SUMMARY:** This rule revises the listings  
of forms (Immigration Forms, and  
Nationality Forms) that are contained in  
8 CFR Parts 299 and 499. This revision is  
necessary to ensure that the Immigration  
and Naturalization Service uses andaccepts only the current editions of the  
forms shown in §§ 299.1 and 499.1 of  
this chapter.**EFFECTIVE DATE:** This rule is effective  
August 31, 1988.**FOR FURTHER INFORMATION CONTACT:**  
Raymond R. Jaroneski, Jr., Senior  
Immigration Examiner, Immigration &  
Naturalization Service, 425 I Street NW.,  
Rm. 7215, Washington, DC 20536,  
Telephone: (202) 833-5014.**SUPPLEMENTARY INFORMATION:** Sections  
299.1 and 499.1 list the prescribed forms  
to be used in compliance with  
Subchapters A, B, and C of this chapter.  
This revision is necessary to ensure that  
the listing of Immigration Forms and  
Nationality Forms remain current.Compliance with 5 U.S.C. 553 as to  
notice of proposed rulemaking and  
delayed effective date is unnecessary as  
this rule provides an up-to-date listing of  
Immigration Forms and NationalityForms to be used and accepted by the  
Immigration and Naturalization Service.In accordance with 5 U.S.C. 605(b), the  
Commissioner of the Immigration and  
Naturalization Service certifies that this  
rule does not have a significant  
economic impact on a substantial  
number of small entities.This is not a major rule within the  
meaning of section 1(b) of E.O. 12291,  
nor does this rule have federalism  
implications warranting the preparation  
of a Federal Assessment Analysis in  
accordance with E.O. 12612.**List of Subjects****8 CFR Part 299**Forms, Reporting and recordkeeping  
requirements.**8 CFR Part 499**Forms, Reporting and recordkeeping  
requirements.



Accordingly, Chapter I of Title 8, Code of Federal Regulations, is amended as follows:

#### PART 299—IMMIGRATION FORMS

1. The authority citation for Part 299 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103.

2. Section 299.1 is revised to read as follows:

##### § 299.1 Prescribed forms.

The forms listed below are hereby prescribed for use in compliance with the provisions of Subchapter A and B of this chapter. To the maximum extent feasible the forms used should bear the edition date shown or as subsequent edition date.

##### Form No., Title and description

AR-4 (8-30-72)—Alien Registration Fingerprint Chart.  
AR-11 (3-21-79)—Alien's Change of Address Card.  
CDC 4.417 (11-74)—(Formerly HSM-240 or PHS-124) Medical Certificate.  
CDC 4.422-1 (10-84)—Statement in Support of Application for Waiver of Excludability under section 212(a)(1), Immigration and Nationality Act.  
CDC 4.422-2 (10-84)—Statement in Support of Application for Waiver of Excludability under section 212(a)(3), Immigration and Nationality Act.  
CDC 4.422-4 (10-84)—Statement in Support of Application for Waiver of Excludability under section 212(a)(1), Immigration and Nationality Act—Military Dependent.  
CDC 4.422-5 (10-84)—Statement in Support of Application for Waiver of Excludability under section 212(a)(3), Immigration and Nationality Act—Military Dependent.  
CDC 42.1 (4-81)—Interstate Reciprocal Notification of Disease.  
CDC 75.17 (4-82)—Report on Alien with Tuberculosis not considered active.  
CDC 75.18 (4-82)—Report on Alien with Tuberculosis Waiver.  
IAP-66 (10-78)—Certificate of Eligibility for Exchange Visitor Status.  
FD-258 (4-25-72)—Applicant Card.  
OF-157 (5-78)—Medical Examination of Applicants for United States Visas.  
G-27 (9-30-82)—Request for Recognition as a Non-Profit Religious, Charitable, Social Service, or Similar Organization Established in the United States under 8 CFR 292.2.  
G-28 (10-25-79)—Notice of Entry of Appearance as Attorney or Representative.  
G-56 (5-1-83)—Call-in Notice.  
G-296 (9-12-58)—Report of Violation.  
G-297 (5-28-70)—Order to Seize Aircraft.  
G-298 (9-12-58)—Public Notice of Seizure.  
G-325 (10-1-82)—Biographic Information.  
G-325A (10-1-82)—Biographic Information.  
G-325B (5-1-79)—Biographic Information.  
G-325C (10-1-82)—Biographic Information.  
G-639 (8-12-82)—Freedom of Information Act/Privacy Act Request.  
G-641 (5-5-83)—Application for Verification of Information from Immigration and Naturalization Records.

G-652 (2-1-78)—Affidavit of Identity.  
G-658 (11-1-75)—Record of Information Disclosure (Privacy Act).  
I-17 (4-4-83)—Petition for Approval of School for Attendance by Nonimmigrant Students.  
I-17A (5-1-83)—Designated School Officials.  
I-17B (5-1-83)—System Attachment.  
I-20 A-B (5-1-83)—Certificate of Eligibility for Nonimmigrant (F-1) Student Status—For Academic and Language Students.  
I-20 M-N (5-1-83)—Certificate of Eligibility for Nonimmigrant (M-1) Student Status—For Vocational Students.  
I-20ID (8-28-83)—Form I-20 ID Copy.  
I-38 (7-25-77)—Decision of the Immigration Judge.  
I-39 (9-22-78)—Decision of the Immigration Judge.  
I-68 (9-1-84)—Canadian Border Boat Landing Permit.  
I-71 (11-30-82)—Inquiry form sent to Employer for Revalidation of Continuing Intent to Hire Alien.  
I-72 (4-1-83)—Form letter for Returning Deficient Applications/Petitions.  
I-79 (5-15-70)—Notice of Intention to Fine under Immigration and Nationality Act.  
I-90 (8-1-85)—Application by Lawful Permanent Resident for New Alien Registration Receipt Card.  
I-92 (6-1-73)—Aircraft/Vessel Report.  
I-94 (10-1-85)—Arrival-Departure Record.  
I-95AB (9-1-84)—Crewman's Landing Permit.  
I-102 (5-5-83)—Application by Nonimmigrant Alien for Replacement of Arrival Document.  
I-122 (5-4-79)—Notice to Applicant for Admission Detained for Hearing before Immigration Judge.  
I-126 (10-30-82)—Report of Status by Treaty Trader or Investor.  
I-129B (7-1-83)—Petition to Classify Nonimmigrant as Temporary Worker or Trainee.  
I-129F (10-7-87)—Petition for Alien Fiance(e).  
I-129L (1-14-87)—Petition to Employ Intracompany Transferee.  
I-129S (1-14-87)—Intracompany Transferee Certificate of Eligibility (Blanket Petitions Only).  
I-130 (2-28-87)—Petition for Alien Relative.  
I-131 (5-5-83)—Application for Issuance of Permit to Reenter the United States.  
I-134 (7-1-83)—Affidavit of Support.  
I-138 (7-1-83)—Subpoena.  
I-140 (8-1-85)—Petition for Prospective Immigrant Employee.  
I-141 (4-21-89)—Medical Certificate.  
I-147 (10-30-83)—Notice of Temporary Exclusion.  
I-151 (7-1-72)—Alien Registration Receipt Card.  
I-171 (3-4-82)—Notice of Approval of Relative Immigrant Visa Petition.  
I-171C (7-1-83)—Notice of Approval or Extension of Nonimmigrant Visa Petition of H or L Alien.  
I-171F (10-14-76)—Notice of Approval of Nonimmigrant Visa Petition for Fiance or Fiancee.  
I-171H (12-15-82)—Notice of Favorable Determination Concerning Application for Advance Processing of Orphan Petition.  
I-175 (4-1-75)—Application for Nonresident Alien's Canadian Border Crossing Card.

I-180 (9-1-81)—Notice of Voidance of Form I-186.  
I-181 (3-1-83)—Memorandum of Creation of Record of Lawful Permanent Residence.  
I-184 (4-1-58)—Alien Crewman Landing Permit and Identification Card.  
I-185 (1-1-75)—Nonresident Alien Canadian Border Crossing Card.  
I-186 (8-1-72)—Nonresident Alien Mexican Border Crossing Card.  
I-190 (3-1-75)—Application for Nonresident Alien Mexican Border Crossing Card.  
I-191 (5-5-83)—Application for Advance Permission to Return to Unrelinquished Domicile.  
I-192 (5-5-83)—Application for Advance Permission to Enter as Nonimmigrant.  
I-193 (5-5-83)—Application for Waiver of Passport and/or Visa.  
I-194 (2-1-82)—Notice of Approval of Advance Permission to Enter as Nonimmigrant (Pursuant to Sec. 212(d)(3) (A) or (B) of the Act).  
I-197 (5-1-76)—U.S. Citizen Identification Card.  
I-202 (11-15-79)—Authorization for Removal.  
I-212 (11-20-85)—Application for Permission to Reapply for Admission Into the United States After Deportation or Removal.  
I-221 (7-1-73)—Order to Show Cause and Notice of Hearing.  
I-221S (8-1-77)—Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien.  
I-243 (9-27-75)—Application for Removal.  
I-246 (3-31-83)—Application for Stay of Deportation.  
I-256A (12-30-83)—Application for Suspension of Deportation.  
I-259 (10-1-89)—Notice to Detain, Deport, Remove or Present Aliens.  
I-259A (2-12-55)—Agreement by Transportation Line to Assume Responsibility for Removal of Aliens. (One-time basis.)  
I-260 (6-1-73)—Notice to Take Testimony of Witness.  
I-284 (12-20-66)—Notice to Transportation Line Regarding Deportation and Detention Expenses of Detained Alien.  
I-286 (4-1-79)—Notification to Alien of Conditions of Release of Detention.  
I-287 (4-10-72)—Special Care and Attention for Alien.  
I-288 (2-20-62)—Notice to Transportation Line Regarding Deportation Expenses of Alien Completely Ready for Deportation.  
I-290A (10-31-79)—Notice of Appeal to the Board of Immigration Appeals.  
I-290B (10-3-83)—Notice of Appeal to Commissioner.  
I-290C (9-30-66)—Notice of Certification.  
I-292 (10-1-83)—Decision.  
I-296 (12-15-82)—Notice to Alien Ordered Excluded by Immigration Judge.  
I-305 (5-1-76)—Receipt of Immigration Officer—United States Bonds or Notes, or Cash, Accepted as Security on Immigration Bond.  
I-310 (4-16-62)—Bond for Payment of Sums and Fines Imposed under Immigration and Nationality Act (Term or Single Entry).  
I-312 (4-15-76)—Designation of Attorney in Fact.



- I-323 (3-15-77)—Notice—Immigration Bond Breached.
- I-328 (6-5-74)—Order on Motion to Reopen Proceedings.
- I-342 (4-25-79)—Determination of the Immigration Judge with Respect to Custody.
- I-351 (6-1-74)—Bond Riders.
- I-352 (6-1-84)—Immigration Bond.
- I-356 (9-27-75)—Request for Cancellation of Public Charge Bond.
- I-360 (7-1-84)—Petition to Classify Public Law 97-359 Amerasian as the Child, Son, or Daughter of a United States Citizen.
- I-361 (7-1-84)—Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97-359 Amerasian.
- I-365 (7-1-84)—Notice of Completion of Preliminary Processing of Petition for Public Law 97-359 Amerasian.
- I-391 (3-14-77)—Notice—Immigration Bond Cancelled.
- I-408 (4-1-83)—Application to Pay off or Discharge Alien Crewman.
- I-410 (5-1-83)—Receipt for Crew List.
- I-418 (7-1-74)—Passenger List—Crew List.
- I-420 (3-15-67)—Agreement (Land-Border) between Transportation Line and United States.
- I-421 (6-29-58)—Agreement (Overseas) Between Transportation Line and United States.
- I-425 (3-24-77)—Agreement for Preinspection at Places Outside United States.
- I-426 (5-1-65)—Immediate and Continuous Transit Agreement Between a Transportation Line and United States of America (special direct transit procedure).
- I-444 (4-1-83)—Mexican Border Visitors Permit.
- I-464 A/E (10-20-80)—Notice of Third/Sixth Preference Petition Approved Under section 203(a) of the Immigration and Nationality Act, as amended.
- I-485 (2-27-87)—Application for Permanent Residence.
- I-485A (3-25-81)—Application by Cuban Refugee for Permanent Residence.
- I-508 (7-1-84)—Application for Change of Nonimmigrant Status.
- I-508 (10-1-80)—Waiver of Rights, Privileges, Exemptions, and Immunities.
- I-508F (6-1-70)—Waiver of Rights, Privileges, Exemptions, and Immunities (Under section 247(b) of the Act and under the Convention between the United States of America and the French Republic with respect to Taxes on Income and Property).
- I-509 (5-31-83)—Notice of Proposed Change of Status.
- I-510 (11-15-82)—Guarantee of Payment.
- I-512 (10-1-82)—Authorization for Parole of an Alien into the United States.
- I-526 (12-22-79)—Request for Determination that Prospective Immigrant is an Investor.
- I-538 (4-1-83)—Application by Nonimmigrant Student for Extension of Stay, School Transfer or Permission to Accept or Continue Employment.
- I-539 (5-5-83)—Application to Extend Time of Temporary Stay.
- I-551 (Jan. 77)—Alien Registration Receipt Card.
- I-566 (9-21-79)—Application for Employment by Spouse or Unmarried Dependent Son or Daughter of A-1 or A-2 Official or

- Employee of Diplomatic or Consular Establishment or G-4 Officer or Employee of International Organization.
- I-570 (10-1-84)—Application for Issuance of Refugee Travel Document.
- I-571 (11-1-79)—Refugee Travel Document.
- I-586 (Apr. 77)—Nonresident Alien Border Crossing Card.
- I-589 (3-1-81)—Request for Asylum in the United States.
- I-590 (5-1-80)—Registration for Classification as Refugee.
- I-591 (5-1-84)—Assurance by a United States Sponsor in Behalf of an Applicant for Refugee Status.
- I-600 (5-5-83)—Petition to Classify Orphan as an Immediate Relative.
- I-600A (5-5-83)—Application for Advance Processing of Orphan Petition.
- I-601 (6-20-80)—Application of Waiver of Grounds of Excludability.
- I-602 (9-10-80)—Application by Refugee for Waiver of Grounds of Excludability.
- I-612 (3-30-83)—Application for Waiver of the Foreign Residence Requirement of section 212(e) of the Immigration and Nationality Act, as amended.
- I-613 (3-30-83)—Request for United States Information Agency Recommendation section 212(e) Waiver.
- I-687 (4-1-87)—Application for Status as a Temporary Resident (section 245A INA).
- I-688 (5-87)—Temporary Resident Card.
- I-688A (5-87)—Employment Authorization Card.
- I-690 (2-14-87)—Application for Waiver of Grounds of Excludability under sections 245A or 210 of the Immigration and Nationality Act.
- I-691 (5-5-87)—Notice of Approval of Status as a Temporary Resident.
- I-692 (5-5-87)—Notice of Denial for Status as a Temporary Resident.
- I-693 (9-1-87)—Medical Examination of Aliens Seeking Adjustment of Status.
- I-694 (4-1-87)—Notice of Appeal of Decision under section 210 or 245A of the Immigration and Nationality Act.
- I-695 (2-24-87)—Application for Replacement of Form I-688A, Employment Authorization, or Form I-688, Temporary Residence Card (Under Pub. L. 99-603).
- I-697 (2-14-87)—Change of Address Card for Legalization and Special Agricultural Workers (SAW).
- I-700 (4-1-87)—Application for Temporary Resident Status as a Special Agricultural Worker (SAW) (Section 210 of the Immigration and Nationality Act).
- I-705 (3-12-87)—Affidavit Confirming Seasonal Agricultural Employment of an Applicant for Temporary Residence Status Under section 210 of the Immigration and Nationality Act.
- I-730 (11-1-85)—Refugee/Asylee Relative Petition.
- I-736 (7-23-87)—Guam Visa Waiver Information.
- I-760 (7-22-87)—Agreement Between Transportation Line, Operating Between Foreign Territory and Guam, and United States.
- ICAO—International Civil Aviation Organization's General Declaration.
- MA 7-50 (4-70)—Application for Alien Employment Certification. (Part I—

Statement of Qualifications of Aliens MA 7-50A). (Part II—Job Offer for Alien Employment MA 7-50B).

7507 (3-69)—Bureau of Customs' General Declaration.

## PART 499—NATIONALITY FORMS

3. The authority citation for Part 499 continues to read as follows:

Authority: 8 U.S.C. 1103.

4. Section 499.1 is amended by revising the entry for N-400 to read as follows:

### § 499.1 Prescribed forms.

\* \* \* \* \*

N-400 (12-5-86)—Application to File Petition for Naturalization.

\* \* \* \* \*

Dated: May 25, 1988.

Richard E. Norton,  
Associate Commissioner, Examinations,  
Immigration and Naturalization Service.  
[FR Doc. 88-19802 Filed 8-30-88; 8:45 am]  
BILLING CODE 4410-10-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 88-NM-16-AD; Amdt. 39-6010]

### Airworthiness Directives; British Aerospace Model BAC 1-11 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to British Aerospace Model BAC 1-11 series airplanes equipped with R.F.D. Type AES-12B inflatable escape slides, which requires installation of a longer operating cable on the emergency escape slide deployment system. This modification will increase the clearance between the outboard edge of the forward passenger door and the slide during the slide inflation sequence. This amendment is prompted by a report of an incident where it was found that, if the passenger entrance door is pushed open slowly, it is possible for the slide to inflate before sufficient clearance between the door and doorway sill has been achieved. This condition, if not corrected, could result in improper slide deployment during emergency evacuation procedures.

**EFFECTIVE DATE:** October 10, 1988.



**ADDRESSES:** The applicable service information may be obtained from British Aerospace, Inc., Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Armella Donnelly, Standardization Branch, ANM-113, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-1967.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to British Aerospace Model BAC 1-11 series airplanes equipped with R.F.D. AES-12B inflatable escape slides, to require installation of a longer operating cable on the emergency escape slide deployment system, was published in the *Federal Register* on May 19, 1988 (53 FR 17956).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received. Both commenters supported the proposed rule.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 6 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2.5 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be \$600.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant

economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane (\$100). A final evaluation has been prepared for this regulation and has been placed in the docket.

#### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

#### PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

#### § 39.13 [Amended]

2. By adding the following new airworthiness directive:

**British Aerospace:** Applies to Model BAC 1-11 series airplanes equipped with R.F.D. AES-12B inflatable escape slides, identified in British Aerospace BAC 1-11 Service Bulletin 25-PM5943, Revision 1, dated May 8, 1987, certificated in any category. Compliance is required within 5 months after the effective date of this AD, unless previously accomplished.

To prevent failure of the emergency escape slide deployment system, accomplish the following, unless previously accomplished:

A. Modify the R.F.D. Type AES-12B emergency escape slide system in accordance with BAC 1-11 Service Bulletin 25-PM5943, Revision 1, dated May 8, 1987.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

**Note.**—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway

South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective October 10, 1988.

Issued in Washington, DC, on August 22, 1988.

Thomas E. McSweeney,

Acting Director, Office of Airworthiness.

[FR Doc. 88-19762 Filed 8-30-88; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 88-NM-46-AD; Amdt. 39-6008]

**Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (Embraer) Model EMB-120 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to Embraer Model EMB-120 series airplanes, which currently requires a change to the Airplane Flight Manual (AFM) procedures for emergency/abnormal operations, an inspection of the flap actuator, and replacement of the flap actuator, if necessary. That action was prompted by a report of an uncommanded extension of the outboard flap actuator. This action requires the installation of new and improved hydraulic filters in the actuator solenoid valves, actuator inlet fitting, and flap hydraulic system; and use of revised AFM operational procedures. This action is prompted by results of an investigation of the reported incident, which revealed that hydraulic fluid contamination caused malfunction of the actuator to occur. This condition, if not corrected, could lead to flap asymmetry, which could result in loss of control of the airplane during a critical phase of flight.

**EFFECTIVE DATE:** October 7, 1988.

**ADDRESSES:** The applicable service information may be obtained from Embraer, 276 S.W. 34th Street, Fort Lauderdale, Florida 33315. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Trammell, Systems Branch (ACE-130A), Atlanta Aircraft



Certification Office, FAA, Central Region, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349; telephone (404) 991-3020.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 87-11-03, Amendment 39-5663 (52 FR 24136; June 29, 1987), applicable to Embraer Model EMB-120 series airplanes, to require installation of new and improved hydraulic filters in the actuator solenoid valve, actuator inlet fitting, and flap hydraulic system, and use of a revised AFM operational procedure, was published in the Federal Register on May 18, 1988 (53 FR 17721).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter concurred with the proposal, but suggested that the wording used to describe the effect of this AD be changed from "... prevent flap asymmetry," to "... reduce the possibility of flap asymmetry," since there may be other causes of flap asymmetry. The FAA concurs and has revised the wording of the final rule accordingly.

Two commenters suggested that the in-line filters in the airplane hydraulic systems will not introduce any significant improvement in the hydraulic fluid filtration because of the filter already existing in the hydraulic reservoir outlet and the filter in the actuator inlet fitting. The FAA does not concur. Since fluid contamination was judged to be the cause of the actuator malfunction, the FAA has determined that increased filtration capacity is justified.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the change previously described.

This airplane is manufactured in Brazil and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

It is estimated that 40 airplanes of U.S. registry will be affected by this AD. Parker Hannifin has indicated that it plans to supply and install the solenoid valve and inlet fitting for each actuator at no cost to operators. Additionally, the modification for the hydraulic system in-line filter is to be supplied at no cost by the manufacturer. Therefore, the only

cost to operators will be the installation of the flap hydraulic system in-line filters. It will take approximately 20 manhours per airplane to accomplish the required installation, and the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$32,000.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12812, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane (\$800). A final evaluation has been prepared for this action and is contained in the regulatory docket.

#### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

#### PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

#### § 39.13 [Amended]

2. By superseding AD 87-11-03, Amendment 39-5663 (52 FR 24136; June 29, 1987), with the following new airworthiness directive:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Applicable to all Model EMB-120 series airplanes, certificated in

any category. Compliance is required as indicated, unless previously accomplished.

To reduce the potential for flap asymmetry that could lead to loss of control of the airplane in a critical phase of flight, accomplish the following:

A. Within 15 days after the effective date of this AD, revise the FAA-approved Airplane Flight Manual (AFM) to include Revision 9 (for EMB-120RT AFM 120/794) or Revision 14 (for EMB-120 AFM 120/624), as applicable.

B. Within 90 days after the effective date of this AD accomplish the following:

1. Replace the flap actuator solenoid valves with new valves equipped with new filters, in accordance with Embraer Service Bulletin 120-027-0050, dated April 13, 1988;

2. Replace the inlet filter fitting of the flap actuators, in accordance with Embraer Service Bulletin 120-027-0042, dated February 10, 1988; and

3. Install in-line filters to the flap control hydraulic plumbing, in accordance with Embraer Service Bulletin 120-027-0038, dated November 16, 1987.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office, FAA, Central Region.

**Note.**—The request for an alternate means of compliance should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Atlanta Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Embraer, 276 SW. 34th Street, Fort Lauderdale, Florida 33315. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia.

This amendment supersedes AD 87-11-03, Amendment 39-5663.

This amendment becomes effective October 7, 1988.

Issued in Washington, DC, on August 22, 1988.

Thomas E. McSweeney,

Acting Director, Office of Airworthiness.  
[FR Doc. 88-19765 Filed 8-30-88; 8:45 am]

BILLING CODE 4910-13-M



## 14 CFR Part 39

[Docket No. 87-NM-174-AD; Amdt. 39-6012]

**Airworthiness Directives; SAAB-Scania AB Model SF-340A Series Airplanes****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to SAAB-Scania AB Model SF-340A series airplanes, which currently requires modification to the wiring and connectors associated with separation (explosive) bolts in the main landing gear (MLG) emergency extension system. This action, in addition to the previously required modifications, requires the separation bolt wiring harness to be lengthened and the existing harness to be re-routed and secured. This action is necessary to prevent failure of the separation bolt wiring harness, which could prevent activation of the separation bolt. This in turn, could prevent full extension of the MLG and, subsequently, cause main gear collapse upon landing, in the event the main gear emergency extension system is utilized.

**EFFECTIVE DATE:** October 10, 1988.

**ADDRESSES:** The applicable service information may be obtained from SAAB-Scania, Aircraft Division, S-58188, Linköping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 87-13-07, Amendment 39-5662 (53 FR 23947; June 26, 1987), applicable to SAAB-Scania Model SF-340A series airplanes, to require certain modifications of the wiring and connectors of the main landing gear (MLG) emergency extension system, was published as a Notice of Proposed Rulemaking (NPRM) in the Federal Register on March 8, 1988 (53 FR 7373).

Based on comments received in response to that NPRM, the FAA issued a Supplemental NPRM on June 14, 1988 (53 FR 23771; June 24, 1988), which

proposed to revise the applicability of the original NPRM to include additional affected airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No additional comments were received in response to the Supplemental NPRM.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that a total of 61 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. The estimated cost of parts per airplane is \$1,475. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$99,735.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, effect on a substantial number of small entities, because of the minimal cost of compliance per airplane (\$1,635). A final evaluation has been prepared for this regulation and has been placed in the docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By superceding AD 87-13-07, Amendment 39-5662 (53 FR 23947; June 26, 1987), with the following new airworthiness directive:

**SAAB-SCANIA:** Applies to Model SF-340A airplanes, manufacturer's serial numbers SF340A-003 through -108 inclusive, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure the reliability of the emergency main landing gear extension system, accomplish the following:

A. For airplanes, serial numbers SF340A-003 to -078, inclusive: Within 90 days after the effective date of this AD, modify the wiring and connectors of the main landing gear emergency extension system in accordance with SAAB Service Bulletin SF340-32-028, Revision 1, dated November 25, 1986.

B. For airplanes with serial numbers SF340A-003 to -108, inclusive: Within 90 days after the effective date of this AD, lengthen the electrical harnesses for the separation bolts, and re-route and secure the existing harnesses, in accordance with SAAB Service Bulletin SF340-32-041, Revision 1, dated October 9, 1987.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

**Note:** The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania, Aircraft Division, S-58188 Linköping, Sweden. These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This Amendment supersedes AD 87-13-07, Amendment 39-5662.

This amendment becomes effective October 10, 1988.



Issued in Washington, DC, on August 22, 1988.

Thomas E. McSweeney,

Acting Director, Office of Airworthiness

[FR Doc. 88-19763 Filed 8-30-88; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 88-NM-61-AD; Amdt. 39-6011]

#### Airworthiness Directives; Short Brothers, PLC, Model SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This amendment revises an existing airworthiness directive (AD), applicable to Short Brothers, PLC, Model SD3-60 series airplanes, which currently requires inspection of interference bushings for looseness in each of four fittings on the rear fuselage used for attachment of the horizontal stabilizer. Looseness of these fittings, if not detected and corrected, could lead to failure of the horizontal stabilizer attachment fittings. This amendment revises the existing AD to limit the applicability only to specific airplanes.

**EFFECTIVE DATE:** October 10, 1988.

**ADDRESSES:** The applicable service information may be obtained from Short Brothers, PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations by revising AD 88-01-10, Amendment 39-5819 (53 FR 14; January 4, 1988), applicable to Short Brothers Model SD3-60 series airplanes, to revise the applicability statement to exclude certain U.S.-registered airplanes that have been determined not to be affected by the unsafe condition addressed in that AD, was published in the Federal Register on June 21, 1988 (53 FR 23250).

Interested persons have been afforded

an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 44 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$7,040.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, effect on a substantial number of small entities, because of the minimal cost of compliance per airplane (\$160). A final evaluation has been prepared for this regulation and has been placed in the docket.

#### List of Subjects 14 CFR Part 39

Aviation safety, Aircraft.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

#### PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.69.

#### § 39.13 [Amended]

2. By revising the applicability

statement of AD 88-01-10, Amendment 39-5819 (53 FR 14; January 4, 1988), as follows:

**Short Brothers:** Applies to Model SD3-60 series airplanes, Serial Numbers SH3601 through SH3867, certificated in any category. Compliance required as indicated, unless previously accomplished.

To preclude failure of the horizontal stabilizer attach fittings, accomplish the following:

A. Within the next 3 months after the effective date of this AD, inspect the interference fit bushings in each of the four horizontal stabilizer attach fittings in accordance with Shorts Service Bulletin Number SD360-55-10, dated November 1985.

B. If the bushing is found to be loose in its fitting and the movement exceeds 0.005 inch, replace the fitting before further flight.

C. If the bushing is found to be loose in its fitting and the movement does not exceed 0.005 inch, replace the fitting within the next 60 days.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

**Note.**—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then sent it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Short Brothers, PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment amends AD 88-01-10, Amendment 39-5819.

This amendment becomes effective October 10, 1988.

Issued in Washington, DC, on August 22, 1988.

Thomas E. McSweeney,

Acting Director, Office of Airworthiness.

[FR Doc. 88-19764 Filed 8-30-88; 8:45 am]

BILLING CODE 4910-13-M



**14 CFR Part 71****[Airspace Docket No. 88-AWP-3]****Establishment of Red Bluff, CA; Control Zone****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

**SUMMARY:** This action establishes a control zone and extension at the Red Bluff Municipal Airport, Red Bluff, CA. The intended effect is to provide controlled airspace for aircraft executing published instrument approach procedures to the Red Bluff Municipal Airport.

**EFFECTIVE DATE:** 0901 u.t.c., October 20, 1988.

**FOR FURTHER INFORMATION CONTACT:**

Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-1642.

**SUPPLEMENTARY INFORMATION:****History**

On May 18, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a control zone at the Red Bluff Municipal Airport, Red Bluff, CA (53 FR 17723). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations establishes a control zone and extension at Red Bluff Municipal Airport, Red Bluff, CA. This action will provide controlled airspace for aircraft executing published instrument approaches to the Red Bluff Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air

traffic procedures and air navigation, it is certified that this rule will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Control zones.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

**PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS**

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.171 [Amended]**

2. Section 71.171 is amended as follows:

**Red Bluff, CA [New]**

Within a 5-mile radius of Red Bluff Municipal Airport, Red Bluff, CA, (lat. 40°09'04"N., long. 122°15'05"W) and within two miles each side of the Red Bluff VORTAC 167° Radial, extending from the 5-mile radius zone to eight miles south of the VORTAC.

Issued in Los Angeles, California, on August 17, 1988.

Jacqueline L. Smith,

Manager, Air Traffic Division Western-Pacific Region.

[FR Doc. 88-19770 Filed 8-30-88; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 71****[Airspace Docket No. 88-ANM-8]****Amend Transition Area, Lewistown, MT****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

**SUMMARY:** This action amends the Lewistown, Montana, transition area to provide additional controlled airspace for a new approach procedure. The intent is to segregate aircraft operating in visual flight rules conditions (VFR) and aircraft operating in instrument flight rules conditions.

**EFFECTIVE DATE:** 0901 u.t.c., September 30, 1988.

**FOR FURTHER INFORMATION CONTACT:** Ted Melland, ANM-536, Federal

Aviation Administration, Docket No. 88-ANM-8, 17900 Pacific Highway South, C-88966, Seattle, Washington 98168, Telephone: (206) 431-2536.

**SUPPLEMENTARY INFORMATION:****History**

On May 16, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide additional controlled airspace at Lewistown, Montana (53 FR 17223).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations is required to contain a new instrument approach procedure at Lewistown. The area will be depicted on appropriate aeronautical charts for pilot reference. Pilots operating in visual flight conditions may thereby circumnavigate the area or otherwise comply with instrument flight rules.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in CFR Part 71**

Aviation safety, Transition areas.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:



**PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS**

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. Section 71.181 is amended as follows:

**Lewistown, Montana, Transition Area [Revised]**

That airspace extending 700 feet above the surface within a 7 mile radius of the Lewistown Municipal Airport (lat. 47°02'56.9"N., long. 109°28'08.1"W) and within 4 miles each side of the Lewistown VORTAC 289° radial, extending from the 7 mile radius area to 10.5 miles west of the VORTAC; and within 4 miles each side of the Lewistown VORTAC 255° radial, extending from the 7 mile radius area to 17.5 miles west of the VORTAC; that airspace extending upward from 1,200 feet above the surface within 16 miles north and 11 miles south of the Lewistown VORTAC 289° radial extending 31 miles west of the VORTAC, and within 5 miles north and 8 miles south of the Lewistown VORTAC 109° radial extending from the VORTAC to 7 miles east of the VORTAC; and excluding overlapping controlled airspace.

Issued in Seattle, Washington, on August 10, 1988.

F.E. Davis,  
Assistant Manager, Air Traffic Division,  
Northwest Mountain Region.

[FR Doc. 88-19769 Filed 8-30-88; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 71**

[Airspace Docket No. 87-ASO-15]

**Alteration of VOR Federal Airway V-437; Florida**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This amendment alters the description of Federal Airway V-437 located in the vicinity of Melbourne, FL. Federal Airway V-437 would be extended from Pahokee, FL, to Biscayne Bay, FL. This alteration permits Patrick Air Force Base Approach Control to establish aircraft on an airway within a departure transition area, thereby reducing radar vectors. This action improves traffic flows in the terminal area and reduces controller workload.

**EFFECTIVE DATE:** 0901 u.t.c., October 20, 1988.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

**SUPPLEMENTARY INFORMATION:****History**

On May 16, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V-437 located in the vicinity of Melbourne, FL (53 FR 17224). The currently preferred routing to Miami is via Melbourne V-437, Pahokee V-267, to GREMM Intersection to the Miami terminal area. The realignment of V-437 improves the traffic flow within the Miami and Patrick Air Force Base terminal areas. This action improves traffic flow and reduces controller workload. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations alters the description of Federal Airway V-437 located in the vicinity of Melbourne, FL. Federal Airway V-437 would be extended from Pahokee, FL, to Biscayne Bay, FL. This alteration permits Patrick Air Force Base Approach Control to establish aircraft on an airway within a departure transition area, thereby reducing radar vectors. This action improves traffic flows in the terminal area and reduces controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it

is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, VOR Federal Airways.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

**PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS**

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.123 [Amended]**

2. Section 71.123 is amended as follows:

**V-437 [Amended]**

By removing the words "From Pahokee, FL; Melbourne, FL;" and substituting the words "From Biscayne Bay, FL; INT Biscayne Bay 340° and Pahokee, FL, 150° radials; Pahokee; INT Pahokee 352° and Melbourne, FL, 217° radials; Melbourne;"

Issued in Washington, DC, on August 16, 1988.

William C. Davis,  
Acting Manager, Airspace—Rules and Aeronautical Information Division.  
[FR Doc. 88-19767 Filed 8-30-88; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 71**

[Airspace Docket No. 87-AGL-21]

**Alteration of VOR Federal Airways; Illinois**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This amendment alters the descriptions of VOR Federal Airways V-10, V-100, V-173, V-227, V-233 and V-429 located in the state of Illinois. These airway changes are the recommendations of a study group to improve the use of airspace in the Chicago, IL, metropolitan area. This action improves the arrival/departure traffic flow in the O'Hare terminal area.



**EFFECTIVE DATE:** 0901 u.t.c. October 20, 1988.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operation Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

#### SUPPLEMENTARY INFORMATION:

##### History

On March 28, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of V-10, V-100, V-173, V-227, V-233, and V-429, located in the state of Illinois (53 FR 9949). This amendment is the culmination of an airspace utilization improvement study for the Chicago, IL, area. These changes are adjustments to O'Hare approach control arrival and departure routes. In conjunction with these airspace changes, resectorization at the O'Hare Air Traffic Control Tower and the Air Route Traffic Control Center will be completed so that the airway changes and resectorization will be simultaneous. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

##### The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of VOR Federal Airways V-10, V-100, V-173, V-227, V-233, and V-429, located in the state of Illinois. These airways changes are the recommendations of a study group to improve the use of airspace in the Chicago, IL, metropolitan area. This action improves the arrival/departure traffic flow in the O'Hare terminal area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated

impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

#### PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983]; 14 CFR 11.69.

##### § 71.123 [Amended]

2. Section 71.123 is amended as follows:

##### V-10 [Amended]

By removing the words "INT Bradford 056" and Joliet, IL, 351° radials," and substituting the words "INT Bradford 058" and Joliet, IL, 287° radials."

##### V-100 [Amended]

By removing the words "INT Rockford 080" and Northbrook, IL, 190° radials;" and substituting the words "INT Rockford 074" and Janesville, WI, 112° radials; INT Janesville 112° and Northbrook, IL, 290° radials;"

##### V-173 [Revised]

From Capital IL; to Peotone, IL.

##### V-227 [Revised]

From Boiler, IN; Roberts, IL; Pontiac, IL; INT Pontiac 008° and Bradford, IL, 058° radials.

##### V-233 [Amended]

By removing the words "From Capital, IL, via Roberts, IL;" and substituting the words "From Capital, IL; INT Capital 063° and Roberts, IL, 233° radials; Roberts;"

##### V-429 [Amended]

By removing the words "Joliet, IL; INT Joliet 351° and Chicago O'Hare, IL, 237° radials;" and substituting the words "to Joliet, IL."

Issued in Washington, DC, on August 17, 1988.

William C. Davis,  
Acting Manager, Airspace—Rules and  
Aeronautical Information Division.  
[FR Doc. 88-19768 Filed 8-30-88; 8:45 am]  
BILLING CODE 4910-13-M

#### 14 CFR Part 71

[Airspace Docket No. 88-AWP-2]

#### Revision to Glendale, AZ, and Phoenix-Luke AFB, AZ, Control Zone; Correction

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Correction to final rule.

**SUMMARY:** An error was noted in the final rule that was published in the Federal Register on July 6, 1988 (53 FR 25322) (Airspace Docket No. 88-AWP-2). This action corrects that error.

**EFFECTIVE DATE:** 0901 u.t.c., August 31, 1988.

**FOR FURTHER INFORMATION CONTACT:** Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration (FAA), 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-1642.

#### SUPPLEMENTARY INFORMATION:

##### History

Federal Register Document 88-AWP-2, published on Wednesday, July 6, 1988, revised the description of the Glendale, AZ, and Phoenix-Luke AFB, AZ. An error was discovered in the geographical coordinates for the Phoenix-Luke AFB, AZ, control zone and this action corrects that error.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small



entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 77

Aviation safety, Control zones.

#### Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document (88-AWP-2), as published in the **Federal Register** on July 6, 1988, is corrected as follows:

#### PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89.

#### § 71.171 [Corrected]

2. The amendment to § 71.171, as published at 53 FR 25323, is corrected as follows:

#### Phoenix-Luke AFB, AZ [Amended]

By removing "[lat. 33°32'06" N, long. 122°22'56" W]" and substituting "[lat. 33°32'06" N, Long. 112°22'56" W]."

Issued in Los Angeles, California, on August 5, 1988.

Merle D. Clure,

Assistant Manager, Air Traffic Division,  
Western-Pacific Region.

[FR Doc. 88-19766 Filed 8-30-88; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### 15 CFR Part 399

[Docket No. 80514-8114]

#### Special South Africa and Namibia Export Controls; Clarification

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

**SUMMARY:** The Bureau of Export Administration is amending the Commodity Control List, Supplement No. 1 to § 399.1 of the Export Administration Regulations, to ensure that exporters are aware of the special controls for South Africa and Namibia that apply to certain unilaterally controlled commodities. This rule, which neither expands nor limits the provisions of the Regulations, amends various Export Control Commodity Numbers by adding a reference to these South African and Namibian controls.

**EFFECTIVE DATE:** This rule is effective August 31, 1988.

**FOR FURTHER INFORMATION CONTACT:** Willard Fisher, Regulations Branch, Bureau of Export Administration, Telephone: (202) 377-3856.

#### SUPPLEMENTARY INFORMATION:

##### Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule mentions a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under Control Number 0625-0001.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility analysis has to be or will be prepared.

4. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau

of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

#### List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 399 of the Export Administration Regulations (15 CFR Parts 368-399) is amended as follows:

#### PART 399—[AMENDED]

1. The authority citation for 15 CFR Part 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

#### PART 399—[AMENDED]

##### Supplement No. 1 to § 399.1 [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), the "Validated License Required" paragraph for each of the Export control Commodity Numbers (ECCNs) listed below is revised to read "Validated License Required: Country Groups S and Z, Iran, and as required by Special South Africa policy below."

Commodity Group 2 (Electrical and Power-Generating Equipment), ECCN 6294F;

Commodity Group 3 (General Industrial Equipment), ECCN 6394F;

Commodity Group 4 (Transportation Equipment), ECCN 6498F;

Commodity Group 5 (Electronics and Precision Instruments), ECCN 6598F; and

Commodity Group 9 (Miscellaneous), ECCN 6994F.

3. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 5406 is amended by revising the "Validated License Required" paragraph to read "Validated License Required: Country Groups QSWYZ, Afghanistan, Iran, The People's Republic of China, and as required by Special South Africa policy below."

4. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 6494F is amended by revising the "Validated License Required" paragraph and by adding a "Special South Africa and Namibia Controls"



paragraph immediately after the "Special License Available" paragraph to read as follows:

6494F Other marine engines both inboard and outboard; n.e.s.; and specially designed parts.

\* \* \* \* \*  
Validated License Required: Country Groups S and Z, Iran, and as required by Special South Africa policy below.  
\* \* \* \* \*

*Special South Africa and Namibia Controls:* A validated license is required for export or reexport to the Republic of South Africa and Namibia if intended for delivery to or for use by or for military or police entities in these destinations, or for use in servicing equipment owned, controlled, or used by or for these entities. See § 385.4(a).

Dated: August 25, 1988.

Michael E. Zacharia,  
Assistant Secretary for Export  
Administration.

[FR Doc. 88-19818 Filed 8-30-88; 8:45 am]

BILLING CODE 3510-DT-M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 211

[Release No. SAB-78]

#### Issuance; Staff Accounting Bulletin No. 78 Regarding Quasi-Reorganizations and Deficit Eliminations

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Publication of staff accounting bulletin.

**SUMMARY:** This staff accounting bulletin expresses the staff's views regarding certain matters relating to quasi-reorganizations, including deficit eliminations.

**FOR FURTHER INFORMATION CONTACT:** Kenneth V. Moreland, Office of the Chief Accountant (202/272-2130) or Howard P. Hodges, Jr., or Nathan Cheney, Division of Corporation Finance (202/272-2553), Securities and Exchange Commission, Washington, D.C. 20549.

**SUPPLEMENTARY INFORMATION:** The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practice followed by the Division of Corporation Finance and the Office of

the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

August 25, 1988.

Jonathan G. Katz,  
Secretary.

### PART 211—[AMENDED]

Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 78 to the table found in Subpart B.

#### Staff Accounting Bulletin No. 78

The staff hereby adds Section S to Topic 5 of the Staff Accounting Bulletin Series. Section S discusses the staff's views regarding certain matters relating to quasi-reorganizations, including deficit eliminations.

#### Topic 5: Miscellaneous Accounting

\* \* \* \* \*

#### S. Quasi-Reorganization.

*Facts:* As a consequence of significant operating losses and/or recent write-downs of property, plant and equipment, a company's financial statements reflect an accumulated deficit. The company desires to eliminate the deficit by reclassifying amounts from paid-in-capital. In addition, the company anticipates adopting a discretionary change in accounting principles<sup>1</sup> that will be recorded as a cumulative-effect type of accounting change. The recording of the cumulative effect will have the result of increasing the company's retained earnings.

*Question 1:* May the company reclassify its capital accounts to eliminate the accumulated deficit without satisfying all of the conditions enumerated in section 210<sup>2</sup> of the Codification of Financial Reporting Policies for a quasi-reorganization?

*Interpretive Response:* No. The staff believes a deficit reclassification of any nature is considered to be a quasi-reorganization. As such, a company may not reclassify or eliminate a deficit in retained earnings unless all requisite

conditions set forth in section 210<sup>3</sup> for a quasi-reorganization are satisfied.<sup>4</sup>

*Question 2:* Must the company implement the discretionary change in accounting principle simultaneously with the quasi-reorganization or may it adopt the change after the quasi-reorganization has been effected?

*Interpretive Response:* The staff has taken the position that the company should adopt the anticipated accounting change prior to or as an integral part of the quasi-reorganization. Any such accounting change should be effected by following generally accepted accounting principles with respect to the change.<sup>5</sup>

Chapter 7A of Accounting Research Bulletin (ARB) No. 43 indicates that, following a quasi-reorganization, a "company's accounting should be substantially similar to that appropriate for a new company." The staff believes that implicit in this "fresh-start" concept is the need for the company's accounting principles in place at the time of the quasi-reorganization to be those planned to be used following the reorganization to avoid a misstatement of earnings and retained earnings after the reorganization.<sup>6</sup> Chapter 7A of ARB

<sup>1</sup> Section 210 indicates the following conditions under which a quasi-reorganization can be effected without the creation of a new corporate entity and without the intervention of formal court proceedings:

(1) Earned surplus, as of the date selected, is exhausted;

(2) Upon consummation of the quasi-reorganization, no deficit exists in any surplus account;

(3) The entire procedure is made known to all persons entitled to vote on matters of general corporate policy and the appropriate consents to the particular transactions are obtained in advance in accordance with the applicable laws and charter provisions;

(4) The procedure accomplishes, with respect to the accounts, substantially what might be accomplished in a reorganization by legal proceedings—namely, the restatement of assets in terms of present conditions as well as appropriate modifications of capital and capital surplus, in order to obviate so far as possible the necessity of future reorganizations of like nature.

<sup>2</sup> In addition, Accounting Research Bulletin (ARB) No. 43, Chapter 7A, outlines procedures that must be followed in connection with and after a quasi-reorganization.

<sup>3</sup> Accounting Principles Board Opinion No. 20 provides accounting principles to be followed when adopting accounting changes. In addition, many newly-issued accounting pronouncements provide specific guidance to be followed when adopting the accounting specified in such pronouncements.

<sup>4</sup> Certain newly-issued accounting standards do not require adoption until some future date. The staff believes, however, that if the registrant intends or is required to adopt those standards within 12 months following the quasi-reorganization, the registrant should adopt those standards prior to or as an integral part of the quasi-reorganization. Further, registrants should consider early adoption of standards with effective dates more than 12 months subsequent to a quasi-reorganization.

<sup>1</sup> Discretionary accounting changes require the filing of a preferability letter by the registrant's independent accountant pursuant to Item 601 of Regulation S-K and Rule 10-01(b)(6) of Regulation S-X, 17 CFR 229.601 and 210.10-01(b)(6), respectively.

<sup>2</sup> Accounting Series Release No. 25 (May 29, 1941).



No. 43 states, in part, " \* \* \* in general, assets should be carried forward as of the date of the readjustment at fair and not unduly conservative amounts, determined with due regard for the accounting to be employed by the Company thereafter (emphasis added)."

In addition, the staff believes that adopting a discretionary change in accounting principle that will be reflected in the financial statements within 12 months following the consummation of a quasi-reorganization leads to a presumption that the accounting change was contemplated at the time of the quasi-reorganization.<sup>7</sup>

**Question 3:** In connection with a quasi-reorganization, may there be a write-up of net assets?

**Interpretive Response:** No. The staff believes that increases in the recorded values of specific assets (or reductions in liabilities) to fair value are appropriate providing such adjustments are factually supportable, however, the amount of such increases are limited to offsetting adjustments to reflect decreases in other assets (or increases in liabilities) to reflect their new fair value. In other words, a quasi-reorganization should not result in a write-up of net assets of the registrant. [FR Doc. 88-19807 Filed 8-30-88; 8:45 am]

BILLING CODE 8010-01-M

## 17 CFR Part 240

[Release No. 33-6798; 34-26028; File No. S7-18-87]

### Short Sales in Connection With a Public Offering

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Temporary rule.

**SUMMARY:** The Commission today announced the adoption, on a temporary basis, of Rule 10b-21(T) under the Securities Exchange Act of 1934, pertaining to certain short sales in connection with a public offering of securities. Rule 10b-21(T) prohibits a person who effects short sales of an equity security during the period beginning at the time that a registration statement or Form 1-A relating to the same class of equity securities is filed and ending at the time that sales may be made in the offering, from covering such short sales with offered securities

purchased from an underwriter or other broker or dealer participating in the offering of such securities.

**EFFECTIVE DATE:** September 30, 1988.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Burke or Ivette Lopez at (202) 272-2848, Office of Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The Commission has adopted, on a temporary basis, Rule 10b-21(T) ("Rule") under the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> which is designed to prevent manipulative short selling of securities in anticipation of a public offering of the same securities. The Commission proposed the Rule for public comment<sup>2</sup> in response to a petition ("NASD Petition") for rulemaking filed by the National Association of Securities Dealers, Inc. ("NASD").<sup>3</sup> The Rule prohibits a person who effects one or more short sales of equity securities of the same class as securities distributed for cash pursuant to a registration statement filed under the Securities Act of 1933 ("Securities Act")<sup>4</sup> or pursuant to a notification on Form 1-A<sup>5</sup> under the Securities Act, from covering such short sale or sales with offered securities purchased from an underwriter or broker or dealer participating in such public offering, if such short sale or sales took place during the period beginning at the time that the registration statement or Form 1-A is filed and the time that sales are permitted to be made pursuant to the registration statement or Form 1-A.<sup>6</sup>

<sup>1</sup> 15 U.S.C. 78a et seq.

<sup>2</sup> Securities Exchange Act Release No. 24485 (May 20, 1987), 52 FR 19885 ("Proposing Release").

<sup>3</sup> The NASD Petition was filed with the Commission on June 12, 1988 pursuant to section 553(e) of the Administrative Procedure Act, 5 U.S.C. 553(e), and Rule 4(a) of the Commission's Rules of Practice, 17 CFR 201.4(a), and is publicly available in File No. S7-18-87 in the Commission's Public Reference Room.

<sup>4</sup> 15 U.S.C. 77a et seq.

<sup>5</sup> 17 CFR 239.90. Form 1-A is used in connection with offerings made pursuant to Regulation A under the Securities Act, 17 CFR 230.251-230.264.

<sup>6</sup> The Commission previously proposed three different versions of the Rule, none of which has been adopted. See Securities Exchange Act Release No. 10636 (February 11, 1974), 39 FR 7808; Securities Exchange Act Release No. 11328 (April 2, 1975), 40 FR 16090; and Securities Exchange Act Release No. 13092 (December 21, 1976), 41 FR 56542; File No. S7-510. For further discussion of these proposals, see Proposing Release, 52 FR 19886. In light of today's adoption of the Rule as proposed in 1987, the Commission is withdrawing all three prior proposals.

After considering the public comments received on the Proposing Release, the Commission has adopted the Rule substantially as proposed.

The NASD Petition was based on concerns relating to short selling prior to a public offering.<sup>7</sup> Such short sales may result in a decrease in the price of the security and consequently a lower offering price. The short sellers are then able to cover their sales and realize a profit by purchasing securities in the offering at the reduced price. Because of the availability of securities at a fixed price from the public offering, the risks entailed in covering those short sales are reduced substantially. The NASD indicated that this practice deprives the issuer of offering proceeds that otherwise would have been realized.

The Commission suggested in the Proposing Release that certain drafting changes could improve the NASD proposal ("Alternative A"). Accordingly, an alternative formulation ("Alternative B") was presented that: (1) Reflected the scope of the Commission's authority to promulgate the Rule by substituting the phrase "it shall be unlawful" for the proposed reference solely to section 10(b) of the Exchange Act;<sup>8</sup> (2) deleted paragraph (b) of Alternative A since it was virtually identical to the definition of "short sale" contained in Rule 3b-3 under the Exchange Act;<sup>9</sup> (3) inserted the term "offered securities" since the Commission understood the NASD Petition to be addressed only to covering purchases involving the securities that are offered pursuant to a registration statement or Form 1-A;<sup>10</sup> and (4) substituted the term "offering" for "distribution" since the latter term has a specific definition in Rule 10b-6 under the Exchange Act.<sup>11</sup>

##### II. Discussion

###### A. The Need for the Rule

The Commission received thirty-six comment letters submitted by thirty-two

<sup>7</sup> The NASD's study, "Short-Sale Regulation of NASDAQ Securities" (November 2, 1986), headed by former Commissioner Irving M. Pollack, endorsed the NASD Petition and the proposed Rule.

<sup>8</sup> The Commission observed that the notational convention of using "10b-" to designate a rule is not a reflection of the scope of the rule's statutory authority. See Proposing Release, 52 FR 19887 n.19.

<sup>9</sup> 17 CFR 240.3b-3.

<sup>10</sup> The NASD urged the Commission to regulate only those covering purchases made out of the public offering to avoid affecting the operation of the market for the securities already outstanding. The Commission agrees that covering short sales in the open market exposes the short seller to the risk that securities to cover the short sale will not be readily available in the amount required, or will be priced higher than the public offering price, and that such purchases should not be restricted by the Rule.

<sup>11</sup> See 17 CFR 240.10b-6(c)(5).

<sup>7</sup> Certain accounting changes require restatement of prior financial statements. The staff believes that if a quasi-reorganization had been recorded in a restated period, the effects of the accounting change on quasi-reorganization of adjustments should also be restated to properly reflect the quasi-reorganization in the restated financial statements.



commentators.<sup>12</sup> The majority of the commentators supported the adoption of the Rule.<sup>13</sup> Commentators favoring adoption stated that short selling in anticipation of a public offering can and does have the effect of driving down the price of the securities to be distributed. These commentators also indicated that, unlike the traditional short sale, persons selling short in anticipation of a public offering are not subject to the usual market risk accompanying the covering transaction, but are assured of covering with offered securities purchased in the public offering at a fixed, and generally lower, price. Only three commentators opposed adoption of the Rule, stating that manipulative short selling practices already are proscribed by existing laws, and that the Rule would have an adverse impact on normal market operations and result in unnecessary compliance burdens.

Nine commentators responded to the Commission's request for comment regarding the extent of pre-offering short selling activity and the impact of such sales on the costs to issuers of completing an offering. Seven of these commentators described first-hand experiences with the adverse effects of short selling activity, which caused them to cancel proposed offerings, or to complete offerings even though they were deprived of proceeds that would have been realized had the market not been subject to such activity. They noted that the market price of the security to be offered had declined significantly just prior to the public offering, allegedly as a result of short selling, and caused them to forfeit substantial proceeds that they otherwise would have received.

The NASD submitted information relating to investigations of three separate public offerings, and stated that, based on these investigations and others involving similar circumstances, it believed that the practice of short selling before a public offering with the intention of covering with shares purchased in the public offering is not uncommon. The investigations revealed substantial short selling activity by certain firms after the filing of the registration statement and a decline in the price of the stock prior to the effective date of the registration

statement.<sup>14</sup> In each investigation, the short sellers covered their short positions immediately after the offering at a profit with shares purchased from entities that had obtained them in the public offering. The NASD stated that the timing and prices involved in these transactions may indicate prearrangement.<sup>15</sup>

The NASD also pointed to problems it faces in pursuing enforcement actions in such cases. The NASD does not have jurisdiction over certain non-broker-dealer entities from whom its members may routinely acquire offered securities to cover short positions established prior to an offering. Thus, the NASD may have difficulty obtaining information from those entities necessary to develop cases against such members. In addition, the NASD indicated that, since this abuse has not been specifically prohibited by a Commission rule, it must bring such cases under general anti-manipulation provisions of the federal securities laws

<sup>14</sup> The Commission had requested that commentators provide statistical analysis demonstrating the extent to which short selling prior to public offerings results in a decrease in the market price of the security to be offered. In response, the NASD conducted a study ("NASD Study") that analyzed the price movements of 194 NASDAQ issues (i.e., securities quoted in the National Association of Securities Dealers Automated Quotation system) and 158 exchange-listed issues immediately prior to and subsequent to non-initial public offerings of common stock conducted from May 1, 1986 to May 31, 1987 and priced at \$5 or more.

The NASD Study also examined equity audit trail data for NASDAQ/NMS securities (i.e., NASDAQ securities designated as national market system securities under Rule 11Aa2-1 under the Exchange Act, 17 CFR 240.11Aa2-1), and National Securities Clearing Corporation (NSCC) clearing short position data for many of the 194 NASDAQ securities included in the price performance analysis.

The NASD Study concluded that its findings provide evidence of unusual short selling, as well as the possible effect of Rule 10b-6 under the Exchange Act, 17 CFR 240.10b-6, on the market price of securities subject to non-initial public offerings. Rule 10b-6 precludes persons participating in a distribution from bidding for or purchasing the security to be distributed, absent an exception to or exemption from the rule. The NASD further concluded that the price data reviewed are consistent with the widely held view that a pattern exists of short selling prior to a non-initial public offering, with covering transactions made from offered securities.

The NASD Study, along with two other studies it references, Barclay and Litzenger, "Announcement Effects of New Equity Issues and the Use of Intraday Price Data," and Barclay, "Common Stock Returns Preceding Seasoned New Equity Offerings on the New York Stock Exchange," are attached as exhibits to the NASD's comment letter dated November 2, 1987, included in File No. S7-18-87.

<sup>15</sup> Any prearrangement between short sellers and those purchasing from underwriters or broker-dealers participating in the offering would be an "indirect" covering transaction with offered securities and would violate the Rule. See Section II.D. *infra*.

which entail the difficult step of proving specific intent to depress the market price of the issuer's stock.

#### B. Decision to Adopt Rule 10b-21(T)

In light of the comments discussed above, the Commission believes there is sufficient reason to adopt the Rule on a temporary basis,<sup>16</sup> and has determined to adopt Alternative B with slight modifications. The Rule will help deter a practice that the Commission views as manipulative and destructive of issuers' capital raising activities.<sup>17</sup> The Commission believes that the Rule will serve an important purpose by avoiding the difficult proof problems involved in demonstrating manipulative purpose.<sup>18</sup>

<sup>16</sup> The Commission is adopting the Rule on a temporary basis to give it the opportunity to analyze, at a later date, whether the Rule is achieving its intended purpose. In this regard, the Commission's staff will request the NASD and the exchanges to furnish statistical information for non-initial public offerings conducted after adoption of the Rule for an eighteen-month period. The staff will then review this data and report to the Commission, within twenty-four months of adoption, whether the pricing impact the NASD believes is indicative of short selling persists and whether any new pricing impacts are observed. At that time, the Commission may revisit Rule 10b-21(T), including whether the Rule should continue to apply to exchange-traded securities.

<sup>17</sup> In 1972, the Commission published a staff opinion that addressed short selling activities prior to a public offering. Securities Exchange Act Release No. 9824 (October 16, 1972). The release observed that such short selling may be "disruptive of fair and orderly markets in the securities" and, where the short sales are intended to depress the market price of the security so that the short position can be covered at a lower price, the activity would violate the anti-manipulation provisions of the Exchange Act.

Short selling schemes of the type addressed by Rule 10b-21(T) have been the subject of enforcement actions by the Commission as violations of the anti-manipulation provisions of the Securities Act and the Exchange Act, *E.g.*, J.A.B. Securities Co., Inc., Securities Exchange Act Release No. 15948 (June 25, 1979); A.P. Montgomery & Co., Inc., Securities Exchange Act Release No. 10909 (July 9, 1974).

The Commission has also cautioned that "any person intending to purchase securities in any registered secondary offering should be on notice that his selling short the same securities prior to the offering may be subject to the registration requirements of Section 5 of the Securities Act [15 U.S.C. 77e], as well as other applicable statutes and rules." Securities Exchange Act Release No. 10636 (February 11, 1974). *Accord*, Securities Exchange Act Release Nos. 11328 n.1 (April 2, 1975) and 9824 (October 16, 1972).

<sup>18</sup> The Commission has on other occasions recognized the need to protect the market for offered securities from the manipulative influences of certain market participants by adopting such rules as Rules 10b-6 and 10b-7 under the Exchange Act, 17 CFR 240.10b-6 and 240.10b-7. These rules limit bids and purchases, including stabilizing transactions, by persons participating in a distribution of securities to prevent their artificially conditioning the market to facilitate the distribution.

A few commentators, including the NASD in its comment letter dated November 2, 1987, suggested

Continued

<sup>12</sup> The letters of comment, as well as a summary of the comment letters prepared by the staff, are available for public inspection and copying at the Commission's Public Reference Room. See File No. S7-18-87.

<sup>13</sup> The six commentators who discussed the alternative proposed formulations, including the NASD, endorsed Alternative B.



Short selling involves sales of stock that the seller does not own. These sales are made with the expectation that the market price of the stock will be lower at the time of the covering transactions. This selling entails the risk that the security's price might increase or the security's supply might be limited. The Commission believes that legitimate short selling activity contributes to the efficient pricing of securities. The activity prohibited by the Rule differs, however, from short selling as usually practiced because a short seller who covers from an offering has access to a pool of securities obtainable from identifiable sources at prices based upon market values that can be adversely affected by the short seller's activity. No such pool of securities or pricing relationships are, however, available for short selling activity as usually practiced. The market risk facing short sellers who cover their positions from the offering can therefore be less than the market risk that generally faces short sellers. This lower degree of risk can, in turn, provide the incentive for manipulative short selling. Because it results in a level of short selling activity greater than that which would otherwise occur in the secondary market for the issuer's shares, that manipulative short selling can cause an artificial price decline around the time of the offering.

The Rule will not adversely affect legitimate market activity. It does not proscribe short selling, nor does it prevent covering transactions made in the open market. Moreover, the Rule does not prevent using securities acquired in a public offering to cover short sales effected prior to the time that the registration statement was filed, or short sales effected after the time that sales may be made in the offering.<sup>19</sup> The Rule is narrowly drawn to impede the particularly abusive conduct of short selling in anticipation of a public offering and covering with offered securities. As a result, all short sellers will be exposed to the risks inherent in

short selling, namely, that the necessary securities may not be readily available, or that if available, they may be priced higher than the public offering price.

#### C. Time Period Covered by the Rule

As proposed, the Rule would have applied to short sales effected during the period "between the filing date of the registration statement or Form 1-A and the date that sales may be made pursuant to the registration statement or Form 1-A." The Commission believes that this period is overly broad in that it captures short sales made (1) on the date of filing, but prior to the time of filing, and (2) on the date of effectiveness, but after the time of effectiveness. Short sales made at those times, however, do not implicate the abuses to which the Rule is addressed. Accordingly, the period specified in the Rule has been refined to begin at the time that the registration statement or Form 1-A is filed with the Commission and end at the time that sales may be made pursuant to the registration statement or Form 1-A.<sup>20</sup>

#### D. Indirect Covering Purchases

The Rule as proposed would have prohibited a short seller from "directly or indirectly" covering short sales with securities purchased in the public offering, if the short sales took place between the filing date of the registration statement or Form 1-A and the time that sales may be made. Several commentators objected to the term "indirectly," particularly as it would apply in the context of market making activities, and suggested that the Commission include an exemption for market makers from the Rule's restrictions.<sup>21</sup>

<sup>20</sup> In most registered offerings, the time that sales may be made occurs on the date of effectiveness of the pricing amendment to the registration statement. However, for offerings conducted pursuant to Rule 430A under the Securities Act, 17 CFR 230.430A, the time that sales may first be made is on the date of pricing, which may be later than the effective date.

Where a short position is held immediately prior to the time of filing, and one or more subsequent short sales and covering transactions occur, it will not always be evident whether the short sales associated with a current short position were effected before the time of filing or subsequently. Under these circumstances, it is intended that holders of short positions prior to the time of filing may cover, with offered shares purchased from a broker or dealer participating in an offering, the lesser of the short position that existed immediately prior to the filing time or the smallest short position held subsequent to that time. Cf. *Letter regarding Bernard H. Raouls, Jr.*, [1985-1986 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 78,144, at 78,637 (June 7, 1985).

<sup>21</sup> Previous versions of the Rule included an exemption for *bona fide* market makers, exchange specialists, odd-lot dealers, and *bona fide* arbitrageurs. See note 6 *supra*.

Specifically, one commentator stated that the word "indirectly" was undefined and ambiguous, leaving open to question exactly what types of transactions were prohibited by the Rule. Several commentators suggested that the term "indirectly" could be read to require a market maker who had established a short position in the normal course of business to ascertain whether the shares purchased in the market following an offering had been issued in that offering. This was described as an insurmountable compliance burden that might severely restrict the legitimate activities of market makers during the period from the filing date of the registration statement and its effectiveness. Commentators remarked that, because no market maker would want to assume such a burden, trading would be disrupted, thereby adversely affecting the liquidity of the market and the stability of security prices. Such result, it was argued, would not be in the public interest.

The NASD, in its letter dated June 8, 1988, however, urged the Commission not to remove market makers from the Rule's coverage, although it acknowledged that prior proposals of the Rule did provide for an exemption for *bona fide* market makers. According to the NASD, the term "indirectly" was intended to cover the situation where a short seller interjects an intermediary for the purpose of covering a short sale with securities purchased in a public offering. In the NASD's opinion, normal market making purchases would not constitute the type of conduct meant to be covered by the term "indirectly." Consequently, it believed that no special compliance procedure to determine the source of the securities purchased would be required. Any exemption for market makers, stated the NASD, would shield market makers engaged in manipulative short selling and would hinder successful enforcement of the Rule.

The Commission agrees with the NASD that a market maker exemption may allow certain persons who engage in manipulative pre-offering short selling to continue that activity free of the Rule's restrictions. Nonetheless, the Commission recognizes the adverse effects that the reading of the proposed Rule suggested by some commentators might have on market makers and securities markets, and has modified the Rule to address those concerns. The "indirectly" language of the proposed Rule was intended to address circumstances where a person covers his short sale by an arrangement or understanding to obtain offered

that Rule 10b-6, which requires distribution participants to cease market making in the security to be distributed two or nine business days prior to the offering's commencement, may also play a role in a decline of the security's price immediately preceding the offering. The NASD, in its comment letter dated June 2, 1988, stated that its investigation of a corporation that experienced a lower stock price prior to an offering demonstrated that such decline is not necessarily due to the withdrawal of market makers for Rule 10b-6 purposes, but may be due to short selling. The Commission believes that adoption of Rule 10b-21(T) will prevent price declines due to abusive short selling activity related to the ability to cover from the offering, independent of price effects, if any, that may result as a consequence of Rule 10b-6.

<sup>19</sup> See Section II.C. *infra* for a discussion of the time period covered by the Rule.



securities from another person who acquires the securities in the primary offering. However, that language could have been interpreted broadly to bring within the Rule transactions in which a person acquired in the marketplace offered securities from persons who had purchased in the offering, but where there was no arrangement or understanding as described above. In order to avoid this ambiguity and possible uncertainty on the part of market participants, the phrase "directly or indirectly" has been deleted from the Rule.

The Rule as adopted prohibits purchases of offered securities to cover short sales made during the specified period, as originally intended. The Rule proscribes such covering purchases effected directly from an underwriter, broker, or dealer participating in the offering. Moreover, such covering purchases effected by prearrangement or other understanding through other purchasers in the primary offering are proscribed through the operation of section 20(b) of the Exchange Act,<sup>22</sup> which prohibits a person from doing indirectly any act that he is prohibited from doing directly by the Exchange Act or any rule thereunder. Thus, the "prearrangement" of the sort that the NASD believes may have been present in the cases it investigated<sup>23</sup> would be prohibited by Rule 10b-21(T) through the operation of section 20(b).<sup>24</sup>

#### E. Other Issues

The Commission requested commentators to address various other issues related to the Rule including the specified time period of the Rule, and application of the Rule to exchange-traded securities and to shelf offerings

conducted pursuant to Rule 415 under the Securities Act.<sup>25</sup>

Two commentators expressed concern about the time period specified in the Proposing Release, *i.e.*, from the filing date of a registration statement or Form 1-A until the time that sales may be made. They noted that a significant period of time could occur between those two events and suggested the period begin on the later of a specified number of days prior to the date sales may be made or the date of filing of the registration statement or Form 1-A. The Commission recognizes that, where, for example, extended review of a registration statement is involved, a substantial period of time could elapse before the public offering commences. Nevertheless, use of a lesser time period would create compliance problems because short sellers would not necessarily be aware of the effective date planned for an offering. Accordingly, the Commission is adopting the Rule with the time period essentially as proposed.<sup>26</sup>

There was little comment on the propriety of applying the Rule to exchange-traded securities. Two commentators noted that the "tick test" of Rule 10a-1<sup>27</sup> may not be a proper deterrent to short selling prior to an offering of exchange-listed securities and that the Rule should apply to such securities. One commentator pointed out that, in light of the differences between the over-the-counter and exchange markets, the Rule should apply to over-the-counter securities only. The NASD specifically declined to comment on the issue. The Commission believes that the potential for manipulative short selling based on the ability to cover in the offering exists both on an exchange and in the over-the-counter market. Accordingly, the Rule as adopted applies to both over-the-counter and exchange-listed securities.<sup>28</sup>

Several commentators stated that the Rule should not apply to shelf offerings conducted pursuant to Rule 415 under the Securities Act. The Commission agrees that such offerings are not normally conducive to the abuse at which the Rule is directed. Accordingly, the Commission has decided to except Rule 415 offerings from the coverage of the Rule. The Commission has also determined to limit the applicability of the Rule to firm commitment offerings, as these offerings present a greater

potential for manipulative short selling.<sup>29</sup>

#### III. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis, which relates to Rule 10b-21(T), has been prepared in accordance with 5 U.S.C. 604. The corresponding Initial Regulatory Flexibility Analysis ("IRFA") is contained in the Proposing Release.<sup>30</sup> No comments on the IRFA were received.

##### A. The Need for and Objectives of the Rule

Rule 10b-21(T) prohibits a person who effects short sales of an equity security during the period beginning at the time that a registration statement or Form 1-A relating to the same class of equity securities is filed and ending at the time that sales may be made pursuant to such registration statement or Form 1-A, from covering such short sales with securities purchased from an underwriter or broker or dealer participating in the public offering of such equity securities. The Rule excludes offerings conducted pursuant to Rule 415 under the Securities Act and offerings conducted otherwise than on a firm commitment basis. The Rule is designed to prevent manipulative short selling by market participants in anticipation of underwritten public offerings.

Manipulative opportunities exist in such offerings because outstanding securities can be sold short prior to the commencement of a public offering of such securities with the motive that such selling activity will lower the price of the offered security and enable the short seller to cover at a depressed price. The ability to purchase shares in the public offering substantially reduces the risks entailed in such short selling. Because the shares in a public offering are generally priced at or slightly below the price of securities of the same class and series in the existing trading market as of a given date shortly before the public offering commences, the issuer and underwriting group may be forced to offer the security at a lower price if the market price decreases during the registration process, especially in the period immediately before the offering price is fixed. As a result, the issuer may

<sup>22</sup> One commentator suggested adding to the Rule a prohibition on covering purchases made from an issuer to prevent manipulative short selling in connection with rights offerings. The Commission is not aware of this type of abuse occurring in rights offerings and is therefore not adopting the suggested change. The Commission will, however, continue to review whether the Rule should be extended to rights offerings, shelf offerings, and best efforts offerings.

<sup>30</sup> 52 FR 19888.

<sup>25</sup> 17 CFR 230.415.

<sup>26</sup> See Section II.C. *supra*.

<sup>27</sup> 17 CFR 240.10a-1.

<sup>28</sup> See note 16 *supra*.

<sup>22</sup> 15 U.S.C. 78(b). Section 20(b) provides:

It shall be unlawful for any person, directly or indirectly, to do any act or thing which it would be unlawful for such person to do under the provisions of this title or any rule or regulation thereunder through or by means of any other person.

Although Section 20 is entitled "Liabilities of Controlling Persons," paragraph (b) is not limited to situations involving persons in control relationships.

<sup>23</sup> See note 15 *supra*.

<sup>24</sup> Trading volume in a security subject to an offering may be greater than usual on the offering's effective date, indicating that a significant number of shares sold in the public offering have entered the secondary market. Customers of the distribution participants may have purchased in the offering and have decided to sell shortly thereafter. Moreover, certain distribution participants may resume market making as soon as the distribution is completed. However, a person with a short position is not required by the Rule to inquire whether any covering purchases he makes in the secondary market (*e.g.*, from a market maker who had participated in the distribution) include shares that had been acquired in the offering.



realize lower than expected proceeds while the short sellers may cover their short sales with lower priced securities purchased in the public offering.

The Rule addresses the concerns created by the type of short selling activity described above without affecting open market activities. It is designed to deter a practice that does not involve legitimate short selling activity. The Rule only prohibits covering short sales with offered securities purchased from an underwriter or broker or dealer participating in a public offering of such securities. Short sellers will still be able to cover their short sales with purchases outside the public offering. Such purchases would expose short sellers to the risks inherent in short selling, namely, that the necessary securities may not be available in the amount required, or that if available, the securities may be priced higher than the public offering price.

#### *B. Issues Raised by Public Comment*

No comments were received on the IRFA. Several commentators remarked, however, that the Rule would impose difficult compliance burdens on market makers as it applied to their purchases to cover short positions established in the course of normal market making activities. The Commission does not intend that market makers establish specific procedures to ensure that shares purchased in normal market making transactions did not originate from a public offering. The Rule is designed to address those situations in which a person covers his short sale by an arrangement or understanding to obtain offered securities from another person who acquired the securities in the primary offering.

#### *C. Significant Alternatives*

The Regulatory Flexibility Act directs the Commission to consider significant alternatives to the Rule consistent with the stated objectives of the applicable statutes and designed to minimize any significant economic impact of the Rule on small entities. The Rule has the potential to affect small businesses that engage in short sales prior to a distribution, small businesses with an existing market for their stock that anticipate a public offering of stock, and small broker-dealers that participate in the offering of securities.

The Rule prohibits the covering of a short sale from a broker or dealer participating in a public offering of the security sold short. The Commission has previously proposed three different versions of the Rule, none of which were adopted. In the Commission's opinion,

the Rule adopted today is the least intrusive to deal with the practice of manipulative short selling prior to a public offering. Indeed, small issuers with an existing market for the stock may benefit from the Rule since it should remove an incentive to engage in short selling of the issuer's stock before a public offering. The Commission continues to believe that any adverse economic impact on small entities will be outweighed by the primary objective of the Rule, which is to prevent manipulative short selling of an issuer's securities by market participants in anticipation of an underwritten public offering.

#### *IV. Cost-Benefit Analysis*

The Commission indicated in the Proposing Release that the cost associated with the Rule would be a reduction in the ability of market participants to sell short in advance of offerings that they believed to be overpriced, resulting in an increased incidence of such offerings. The NASD questioned the assumption underlying this statement, namely, that there is a correct price for securities distributed in a public offering, and stated that the criteria to be used in determining when an offering is overpriced are not well defined. The NASD pointed out that the Rule is intended to ensure that a short seller will not use the distribution process to eliminate the market risk associated with short sale transactions. Another commentator pointed out that the Rule does not prohibit short selling, but merely restricts covering transactions in the context of a registered offering and for a limited and well-defined period. A third commentator acknowledged that short selling could benefit the public by allowing a security to be purchased at a more attractive price, but also was of the opinion that to allow the short seller to cover through the public offering represented an unfair advantage and could result in manipulative conduct.

Although the Commission recognizes that the Rule will diminish a short seller's ability to effect a covering transaction by restricting the source of securities from which he may cover, it believes the Rule will not prevent the beneficial effects of short selling from reaching the market. If legitimate market forces would have driven down the price of a security before a public offering in the past, those same forces are free to operate in the same manner today.

The Commission believes that the cost of restricting a short seller's ability to cover is balanced by the benefits derived from preventing manipulative

short selling activity before a public offering. Several commentators described instances of such selling resulting in the withdrawal of proposed public offerings or in lower proceeds than anticipated. In the case of a withdrawn public offering, an issuer faces out-of-pocket expenses that have been incurred by the time the offering is filed. When an issuer completes a public offering despite lower proceeds, it may have been forced to do so because of an urgent need for the funds or the higher cost of alternative financing. The Rule adopted today will allow an issuer to proceed with a proposed offering without facing the situations described above. The Commission believes that the resulting benefit to issuers outweighs the limited cost imposed on short sellers.

#### *V. Effects on Competition*

Section 23(a)(2) of the Exchange Act<sup>31</sup> requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered Rule 10b-21(T) in light of the standards cited in section 23(a)(2) and believes for the reasons stated in this release that adoption of Rule 10b-21(T) will not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.

#### *List of Subjects in 17 CFR Part 240*

Broker-dealers, Reporting and recordkeeping requirements, Securities, Issuers, Fraud.

#### *Statutory Authority and Text of Rule*

The Commission hereby amends Part 240 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

#### **PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934**

1. The authority citation for Part 240 is amended by adding the following citation.

Authority: Sec. 23, 48 Stat. 901, as amended, 15 U.S.C. 78w, \* \* \* § 240.10b-21(T) is also issued under Secs. 2, 3, 9(a)(6), 10(a), 10(b), 15(c), 23(a), and 30(a), 15 U.S.C. 78b, 78c, 78i(a)(6), 78j(a), 78j(b), 78o(c), 78w(a), and 78dd(a).

2. By adding § 240.10b-21(T) to read as follows:

<sup>31</sup> 15 U.S.C. 78w(a)(2).



**§ 240.10b-21(T). Short Selling in connection with a public offering.**

(a) It shall be unlawful for any person who effects one or more short sales of equity securities of the same class as securities offered for cash pursuant to a registration statement filed under the Securities Act of 1933 ("Securities Act") or pursuant to a notification on Form 1-A under the Securities Act ("offered securities") to cover such short sale or sales with offered securities purchased from an underwriter or broker or dealer participating in the offering, if such short sales or sale took place during the period beginning at the time that the registration statement or Form 1-A is filed and ending at the time that sales may be made pursuant to the registration statement or Form 1-A.

(b) This rule shall not apply to offerings filed under Rule 415 under the Securities Act (17 CFR 230.415) or to offerings that will not be conducted on a firm commitment basis.

(c) This rule shall not prohibit any transaction or transactions if the Commission, upon written request or upon its own motion, exempts such transaction or transactions either unconditionally or on specified terms and conditions.

By the Commission.

Jonathan G. Katz,  
Secretary.

Date: August 25, 1988.

[FR Doc. 88-19809 Filed 8-30-88; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1 and 602

[T.D. 8221]

#### Income Tax; Applications for Exemption From Self-Employment Taxes for Ministers, Certain Members of Religious Orders, and Christian Science Practitioners

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulations and withdrawal of temporary regulations.

**SUMMARY:** This document provides final regulations and withdraws temporary regulations relating to applications for exemption from self-employment taxes filed by ministers, members of a religious order who are not under a vow of poverty, and Christian Science practitioners. The final regulations reflect changes to the applicable tax law made by section 1704(a) of the Tax Reform Act of 1986 and provide

guidance on the manner of applying for exemption from self-employment taxes under section 1402(e) of the Internal Revenue Code of 1986.

**EFFECTIVE DATE:** The regulations contained in this document are effective with respect to applications filed after December 31, 1986.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Shaw of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T (LR-154-86)). Telephone 202-566-3297 (not a toll-free call).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collections of information contained in this regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-0168. The collections of information contained in this final rule have been incorporated into Form 4361 under the same control number. The estimated average burden associated with Form 4361 is 31 minutes. The collections of information contained in this final rule will not increase that burden.

This estimate is an approximation of the average time expected to be necessary for the collections of information. It is based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer TR:FP, Washington, DC 20224, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

##### Background

Section 1402(e)(1) of the Internal Revenue Code of 1986 provides that ministers, members of a religious order who are not under a vow of poverty, or Christian Science practitioners may file an application for exemption from self-employment taxes. That section requires any individual seeking the exemption to file an application together with a statement that he or she is either conscientiously opposed to, or because of religious principles opposed to, the acceptance (with respect to services performed as a minister, member, or

practitioner) of any public insurance that makes payments in the event of death, disability, old age or retirement, or makes payments toward the cost of, or provides services for, medical care.

Section 1704(a) of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2085, 2779) amended section 1402(e)(1) of the Code to require an individual (other than a Christian Science practitioner) who applies for exemption from self-employment taxes to state in the application that the individual has informed his or her church or order that he or she is opposed to receiving such insurance. In addition, section 1704(a) of the Act added a new paragraph (2) to section 1402(e) of the Code to require verification that all applicants (including Christian Science practitioners) are aware of the grounds for which an exemption may be granted and that they seek the exemption on such grounds. No application for exemption will be approved without this verification. The amendments made by section 1704(a) of the Act are effective with respect to applications filed after December 31, 1986.

On April 15, 1987, the Federal Register published temporary regulations (52 FR 12161) and a cross-referencing notice of proposed rulemaking (52 FR 12194) containing proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 1402(e) of the Code. These amendments were proposed to conform the regulations to section 1704(a) of the Act. Several comments were received. No public hearing was held because none was requested. After consideration of all comments regarding the proposed amendments, those proposed amendments are adopted as revised by this Treasury decision and redesignated as § 1.1402(e)-5A. The final regulations also revise § 1.1402(e)-1A to include a cross-reference to § 1.1402(e)-5A. The temporary regulations are withdrawn.

##### Comments

The proposed and final regulations provide that any application for exemption under section 1402(e) filed after December 31, 1986, by a minister, member of a religious order not under a vow of poverty, or Christian Science practitioner may be approved by the Service only after verification that the individual applying for the exemption is aware of the grounds on which the individual may receive an exemption pursuant to section 1402(e) and that the individual seeks exemption on such grounds. The proposed and final regulations set forth the procedure to be followed for such verification.



One commenter stated that verification of an application on Form 4361 should be conducted by the Department of Health and Human Services and not the Internal Revenue Service. The Department of Health and Human Services has declined to verify such applications.

Another commenter requested clarification as to the status of an applicant who does not return the signed verification statement within 90 days of the date on which the statement is mailed to the applicant. Paragraph (c)(2) of the proposed regulation provided that in such circumstances the "application for exemption will not be effective until the date that the signed copy of the statement is received" by the Service. The commenter requested clarification as to whether this would result in the application being treated as not timely filed under section 1402(e)(3) or in the exemption not being effective until such later date under section 1402(e)(4). The final regulations remove the words "application for" to clarify that the latter interpretation was intended. Thus, the applicant will be liable for self-employment taxes with respect to services performed by him or her as a minister, member of a religious order, or Christian Science practitioner prior to the effective date of the exemption.

#### Special Analyses

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

Although a notice of proposed rulemaking soliciting public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

#### Drafting Information

The principal author of these regulations is Robert E. Shaw of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations both on matters of substance and style.

#### List of Subjects

26 CFR 1.1401-1—1.1403-1

Income tax, Self-employment income.

26 CFR Part 602

Reporting and recordkeeping requirements.

#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 and Part 602 are amended as follows:

#### Income Tax Regulations

##### PART 1—[AMENDED]

**Paragraph 1.** The authority for Part 1 is amended by adding the following citation.

**Authority:** 26 U.S.C. 7805. \* \* \* Section 1.1402(e)-5A also issued under 26 CFR 1402(e) U.S.C. (1) and (2).

**Par. 2.** The authority for Part 1 is amended by removing the following citation:

**Authority:** \* \* \* Section 1.1402(e)-5T also issued under 26 U.S.C. 1402(e) (1) and (2).

##### § 1.1402 [Amended]

**Par. 3.** Section 1.1402(e)-5T is removed.

**Par. 4.** The temporary regulations (§ 1.1402(e)-5T) published at 52 FR 12161 are adopted as final regulations, with the following changes:

1. The section number is changed to 1.1402(e)-5A.
2. Paragraph (c)(2) of § 1.1402(e)-5A is amended by removing from the last sentence the words "application for."

**Par. 5.** Section 1.1402(e)-1A is revised to read as follows:

##### § 1.1402(e)-1A Application of regulations under section 1402(e).

The regulations in §§ 1.1402(e)-2A through 1.1402(e)-4A relate to section 1402(e) as amended by section 115(b)(2) of the Social Security Amendments of 1967 (81 Stat. 839) and apply to taxable years ending after 1967. Section 1.1402(e)-5A reflects changes made by section 1704(a) of the Tax Reform Act of 1986 (100 Stat. 2085, 2779) and applies to applications for exemption under section 1402(e) filed after December 31, 1986. For regulations under section 1402(e) (as in effect prior to amendment by the Social Security Amendments of 1967) applicable to taxable years ending before 1968, see §§ 1.1402(e)(1)-1 through 1.1402(e)(6)-1.

#### OMB Control Numbers Under the Paperwork Reduction Act

##### PART 602—[AMENDED]

**Par. 6.** The authority for Part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

##### § 602.101 [Amended]

**Par. 7.** Section 602.101(c) is amended by removing from the appropriate places in the table "1.1402(e)-5T \* \* \* [1545-0168]."

**Par. 8.** Section 602.101(c) is amended by inserting in the appropriate places in the table "1.1402(e)-5A \* \* \* [1545-0168]."

**Lawrence B. Gibbs,**  
*Commissioner of Internal Revenue.*

Approved:

**O. Donaldson Chapoton,**  
*Assistant Secretary of the Treasury.*  
August 15, 1988.

[FR Doc. 88-19834 Filed 8-30-88; 8:45 am]

BILLING CODE 4830-01-M

#### DEPARTMENT OF DEFENSE

##### Office of the Secretary

##### 32 CFR Part 199

[DoD Regulation 6010.8-R, Amdt. No. 13]

##### Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Changes to the CHAMPUS DRG-Based Payment System and Fiscal Year 1989 Rates

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** In FR Doc. 77-7834, appearing in the Federal Register on April 4, 1977, (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. DoD Regulation 6010.8-R was reissued in the Federal Register on July 1, 1986 (51 FR 24008).

This final rule changes the proposed amendment of rule which was published on June 3, 1988 (53 FR 20576). It revises the comprehensive CHAMPUS regulation, DoD 6010.8-R (32 CFR Part 199), pertaining to payment for inpatient hospital services. This final rule changes the CHAMPUS DRG-based payment system which was implemented on October 1, 1987. Some of the changes are necessary to conform to recent statutory changes affecting the Medicare Prospective Payment System (PPS) upon which the CHAMPUS DRG-based



payment system is modeled. Other changes expand the scope of the CHAMPUS DRG-based payment system.

**EFFECTIVE DATE:** This final rule is effective for inpatient hospital admissions occurring on or after October 1, 1988.

**ADDRESS:** Office of the Civilian Health and Medical Program of the Uniformed Services, (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900.

For copies of the Federal Register containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

The charge for the Federal Register is \$1.50 for each issue payable by check or money order to the Superintendent of Documents.

**FOR FURTHER INFORMATION CONTACT:** Stephen E. Isaacson, Office of Program Development, OCHAMPUS, telephone (303) 361-4005.

To obtain copies of this document, see the "Address" section above. Questions regarding payment of specific claims under the CHAMPUS DRG-based payment system should be addressed to the appropriate CHAMPUS contractor.

**SUPPLEMENTARY INFORMATION:** On June 3, 1988, we published a proposed amendment of rule to modify the CHAMPUS DRG-based payment system which was implemented on October 1, 1987. This rule included a number of changes to conform to statutory or regulatory changes to the Medicare PPS as well as changes to expand the CHAMPUS DRG-based payment system to alcohol/drug abuse services, children's hospitals, and neonate services. We refer the reader to the proposed rule for more detailed explanations of the proposed changes to the CHAMPUS DRG-based payment system and the implementing regulations in 32 CFR Part 199.

We provided a 30-day comment period on the proposed amendment of rule. This final rule announces our decisions on the issues raised by commenters in response to our proposed rule.

## I. Background

### A. Summary

In 1983, Congress called on DoD to establish a new method to pay hospitals for inpatient care under CHAMPUS, to be modeled after the recently established prospective payment system for the Medicare program. Rather than just paying billed charges, the new method was to pay fixed rates for

particular categories of medical care, grouped into diagnosis-related groups, or DRGs. This Congressional action was followed by a 1986 law giving CHAMPUS the practical ability to adopt a prospective payment method by linking hospital participation in Medicare with that in CHAMPUS.

Paying hospitals on the basis of prospectively determined amounts per discharge limits the financial liability of CHAMPUS, yet at the same time provides fair treatment and positive incentives for hospitals. Instead of paying hospitals whatever they charge for whatever services they provide, CHAMPUS now pays hospitals fixed rates in general regardless of how long the patient stays or how many procedures the hospital provides. By paying hospitals according to DRGs, this system recognizes the different amount of resources required to care for patients with different diagnoses, demographic characteristics, and specific procedures performed. Hospitals may keep the difference between the amount paid for care and the amount it cost to provide the care. Thus, efficient hospitals have the opportunity to enhance their financial position.

On September 1, 1987, we published a final rule (52 FR 32992) to implement the CHAMPUS DRG-based payment system. On September 15, 1987, we published an amendment to the final rule (52 FR 34775) which contained the final adjusted standardized amounts (ASA). This was followed by a notice on March 1, 1988, (53 FR 6182) which implemented a new Grouper Program and the resultant revised weights and rates as well as certain provisions of the 1988 Department of Defense Appropriations Act which exempted certain services from the CHAMPUS DRG-based payment system. The regulations governing the CHAMPUS DRG-based payment system are located in 32 CFR Part 199.

This October, Medicare will be entering its sixth year under the DRG payment system and CHAMPUS will be entering its second. It has been found to be a fair, effective method for paying for quality hospital care.

### B. Summary of Proposed Amendment to Rule

In the proposed rule we set forth changes which would be effective for the second year of operation of the CHAMPUS DRG-based payment system beginning on October 1, 1988. Following are the major changes that we proposed to make to the system.

## 1. Exemption of Certain Pediatric Services From the CHAMPUS DRG-Based Payment System

We proposed that discharges involving pediatric bone marrow transplants, children determined to be HIV seropositive, and pediatric cystic fibrosis be exempt from the CHAMPUS DRG-based payment system.

## 2. Reclassification of Areas for the Adjusted Standardized Amounts

We proposed to implement three adjusted standardized amounts—for large urban areas, other urban areas, and rural areas. This is similar to the change implemented under the Medicare PPS and published on April 5, 1988 (53 FR 11134), which provided for 3 separate update factors to be applied.

## 3. Redesignation Relating to Certain Rural Areas

We proposed to adopt the changes made for the Medicare PPS under which certain hospitals in rural areas, because of their proximity to urban areas, are redesignated as urban hospitals.

## 4. Medicare Cost-to-Charge Ratio

We proposed to use a cost-to-charge ratio more closely associated with our base year. The ratio we will use was calculated by the Health Care Financing Administration (HCFA) and published in the Federal Register on May 27, 1988.

## 5. Alcohol/Drug Abuse Services

We proposed to begin coverage initially deferred for alcohol/drug abuse services and include them under the CHAMPUS DRG-based payment system. Generally, payment for these services would be made using the DRGs in use under the Medicare PPS and using weights and rates developed by CHAMPUS and published in this final rule. The one exception to the Medicare approach is that DRG 435, which represents the majority of CHAMPUS alcohol/drug abuse cases, would be split into two age groups.

## 6. Children's Hospitals

We proposed to begin coverage initially deferred for these hospitals. Payment to these hospitals would be made under the CHAMPUS DRG-based payment system, but, in recognition of the higher costs of care in these hospitals, a "children's hospital differential" would be developed which would be used to increase each DRG-based payment to children's hospitals.

## 7. Neonate Services

We proposed to begin coverage initially deferred for these services.



When incorporated into the CHAMPUS DRG-based payment system, payment for these services would take into consideration infants' birthweights as incorporated in the Children's DRGs (now known as Pediatric Modified DRGs or PM-DRGs) developed by the National Association of Children's Hospitals and Related Institutions (NACHRI). We also proposed to consider modifying the outlier policy for these services.

#### 8. Outliers

We proposed to revise our outlier procedures in accordance with most of the changes proposed for the Medicare PPS in the Health Care Financing Administration's (HCFA) May 27, 1988, proposed rule.

#### 9. Burn Outliers

We proposed to use the Medicare PPS burn outlier procedures published on April 5, 1988 (53 FR 11137).

#### 10. Other Minor Changes and Clarifications to the Existing Procedures.

There are a number of minor changes or clarifications to the provisions currently in the CHAMPUS regulation which we proposed. These are:

—We proposed to use the new Grouper Program used under the Medicare PPS beginning October 1, 1988.

—We proposed to use the same update factors used by Medicare.

—We proposed to use a revised formula for calculating the indirect medical education adjustment factor to reflect the revisions made in the Medicare formula.

—We proposed that the per diem cost-sharing amount for beneficiaries other than dependents of active-duty members include an amount to recognize hospitals' costs for capital and direct medical education.

—We proposed to eliminate the requirement that a hospital's request for payment of capital and direct medical education costs be submitted to the CHAMPUS contractor within three months of the end of the hospital's Medicare cost-reporting period.

—We proposed clarifications to the definitions of "total inpatient days" and "total CHAMPUS inpatient days" which are required on hospitals' requests for capital and direct medical education payments.

We clarified how the percentage reductions for capital payments which are required under the Medicare PPS will be applied under the CHAMPUS DRG-based payment system.

—We proposed to use the wage index amounts published for the Medicare PPS in their proposed rule for FY 1989.

—We clarified a cross-reference regarding our intention that hospital-based professionals are to be reimbursed using the allowable charge methodology.

#### C. Congressional Action on Children's Hospitals and Neonatal Care.

In June 1988, the House Appropriations Committee reported that although DoD's preliminary progress is encouraging, the Committee has retained its provision to exclude neonatal care and children's hospitals from the CHAMPUS PPS. (See House Report No. 100-681, 100th Congress, 2nd Session, page 34.)

The Senate Appropriations Committee, however, permits inclusion of these categories once the Department of Defense has resolved certain inequities (H.R. 4781, 100th Congress, 2nd Session, page 86).

The proposed rule changes on children's hospitals and neonates set forth in the June 3, 1988 Notice were consistent with Senate direction. However, because Congressional intent is still unclear, we intend to separately publish the final rule changes for these services in the near future in order to allow consideration of further developments in Congress regarding this matter.

#### D. Number and Types of Public Comments

We received a total of 33 individual comments on the proposed rule. The types and volume of commenters were as follows:

—National Hospital Associations—5

—National Medical Associations—3

—Other National Associations—2

—Hospitals—22

Other Healthcare Organizations—1

We received a number of general comments which do not relate to any specific provision of our proposed rule, but relate to our proposed changes as a whole and our implementation plans for them. We will address those comments here before we respond to the comments regarding specific sections of our proposed rule.

In the proposed rule we stated that "the procedures \* \* \* are to be applicable to all discharges occurring on or after October 1, 1988." Although we did not receive any comments on this, we are modifying the effective date for this rule to be for admissions occurring on or after October 1, 1988. Accordingly, hospitals will be reimbursed for these services under the same payment methodology they expected to be used when the patient was admitted. In addition, since certain of these services

previously excluded from the DRG system may have already involved an interim billing prior to the effective date, it would be administratively difficult, and fiscally unfair to hospitals, to attempt to reconcile the total payments with the DRG-based allowed amounts.

Several commenters suggested that implementation of the proposed changes should be postponed for one year until a study of the potential impact can be conducted.

This was a common comment, overall and specific to certain aspects. We think delay in the implementation of these changes is unnecessary for two reasons. First, a number of the changes (e.g., the reclassification of the areas, burn outliers, etc.) already have been implemented under the Medicare PPS or will be implemented effective October 1, 1988. Thus, hospitals are already adjusting to these changes under Medicare and the inclusion of them for CHAMPUS will result in a marginal increase in workload for hospitals. In fact, these changes may result in a decrease in workload for hospitals, since they will not have to maintain two distinct payment systems for government beneficiaries in these areas. Second, the purpose of delay is stated to be to allow OCHAMPUS time to study those changes which end exemptions under our DRG-based payment system—i.e., the inclusion of alcohol/drug abuse services. However, that is precisely what we intended when we delayed implementation of these areas last year, and we have accomplished just that during the past year. The RAND Corporation has studied this under a contract with the Department of Defense and we have analyzed their results. We think that the alcohol/drug abuse approach is equitable to hospitals and acceptable to the government.

Several commenters suggested that the comment period on the proposed rule should be no less than 60 days.

The comment period conforms to statutory requirements, and we believe it is adequate to permit interested parties to consider the proposed rule and provide substantive comments. We have also had a number of meetings with interested parties regarding the issues contained in our proposed rule. These meetings have provided the opportunity to share information and facilitate meaningful input on the proposed rule. Additionally, we received, and have considered, a number of comments well after the official close of the comment period. As a result, the comment period was effectively significantly longer than thirty days. Lastly, we have received no



indication that additional comments would have been received, or additional issues raised, had the comment period been longer.

Several commenters suggested that the proposed weights and rates should be published more than 30 days in advance.

We do not believe this is necessary. Hospitals were given the same 30-day advance notice last year when the changes were more significant. The final weights and rates are attached to this final rule for information (Tables 1 and 2).

One commenter suggested that a standard pricer program which does not vary by fiscal intermediary should be made available to all vendors and hospitals. The commenter believed that this "would go far toward eliminating the confusion that exists in current CHAMPUS billing systems."

Unlike Medicare, CHAMPUS does not have a uniform processing system among our fiscal intermediaries. Each FI is allowed to develop its own system to process claims, and these systems are proprietary. As a result, it would be impossible for us to develop a standard pricer program which would be compatible with each FI's system or which vendors and hospitals could obtain. Nor is this necessary for vendors and hospitals, since our DRG-based payment system essentially requires no changes in the providers' billing systems. In fact, since there are no required changes, we aren't aware that any confusion exists. Moreover, we do know that some software vendors have developed pricer programs for the CHAMPUS DRG-based payment system, and these are available to hospitals which wish to use them.

One commenter suggested CHAMPUS should pay on a reasonable cost basis for DRGs in which an individual hospital has fewer than ten cases in the base year.

We don't see that anything could be gained from this—certainly such a procedure has not been adopted under other DRG-based payment systems. We think the payment amounts under the CHAMPUS DRG-based reimbursement system are reasonable. Since CHAMPUS has a relatively limited number of admissions to most hospitals, this would effectively negate our DRG-based reimbursement system and the incentives for efficiency it creates which we discussed in last year's rules.

One commenter was concerned that CHAMPUS was considering rebasing rates at this time, since this would penalize efficient hospitals for their cost cutting efforts.

We fully agree with this comment, and we do not intend to rebase our rates at this time. However, we do intend to recalibrate the rates using the same database. We believe this is necessary as a result of several major policy changes in this rule which will affect the adjusted standardized amounts. These are the inclusion of alcohol/drug abuse and psychiatric services under the CHAMPUS DRG-based payment system, and the refinement of the outlier payment policies and thresholds.

One commenter suggested that a disproportionate share adjustment should be adopted under the CHAMPUS DRG-based payment system.

This was discussed in last year's rule, and our position is unchanged. Since CHAMPUS has no disproportionate share adjustment, we use a higher indirect medical education adjustment formula to compensate. Beginning October 1, 1988, we will use the formula which is to be effective for Medicare as of October 1, 1990, i.e., once the disproportionate share adjustment is eliminated.

Some commenters suggested that a provision for prompt payment of CHAMPUS claims by fiscal intermediaries should be adopted.

For a number of years CHAMPUS has had a provision for prompt payment of CHAMPUS claims by our fiscal intermediaries. Specifically, we require that a minimum of seventy-five (75) percent of all claims and adjustment claims processed shall be completed within twenty-one (21) calendar days from the date of receipt. We continuously monitor and emphasize this requirement, and it is tied to financial incentives in each fiscal intermediary's contract. In fact, our FIs are currently processing more than 83 percent of the claims within twenty-one days.

A number of commenters suggested that the study results from the RAND Corporation should be made available. This has been our intention all along and the report will shortly be available.

Below we briefly summarize each of the major provisions of the proposed amendment of rule on which we received comments and provide an analysis of the comments and our responses. We have also provided a reference to each provision's designation in the proposed regulation. Section IX of this preamble summarizes the changes we are making to the regulation as a result of the comments we received. We received no comments on many of our proposed changes, and we will not address those changes unless we are making some further change or clarification on our own.

## II. Exemption of Certain Pediatric Services From the Champus DRG-Based Payment System (Sections 199.14(a)(1)(ii)(C)(8), (9), and (10))

Discharges involving pediatric bone marrow transplants, children determined to be HIV seropositive, and pediatric cystic fibrosis will continue to be exempt from the CHAMPUS DRG-based payment system.

*Comment*—The exemptions should be expanded to all transplant procedures including heart, lung, liver, and kidney.

*Response*—We have already exempted heart and liver transplants and lung transplants are not covered by CHAMPUS. Kidney transplants are subject to our DRG-based payment system, but we have very few of them since most are covered under Medicare. Moreover, kidney transplants have been an accepted medical practice for sufficient time so that procedures and charges are stabilized, and the DRG-based payment amounts accurately reflect average costs.

## III. Redesignation of Certain Rural Hospitals As Urban Hospitals

Certain rural hospitals which have been so identified by Medicare will be paid at the higher urban adjusted standardized amount.

*Comment*—Which urban ASA will be used for these rural hospitals—large urban or other urban?

*Response*—Medicare has redesignated the rural hospitals because they meet certain conditions and are adjacent to urban areas. The urban ASA to be used will be the one used for the adjacent urban area, and, where the rural area is adjacent to more than one urban area, the ASA for the urban area to which the most workers commute will be used.

## IV. Alcohol/Drug Abuse Services (Sections 199.4(e)(4)(i), 199.4(e)(4)(ii)(A), and 199.14(a)(1)(i)(A))

Payment for alcohol/drug abuse services, in all hospital settings including specialty hospitals and units, would be made using the DRGs in use under the Medicare PPS and using weights and rates based on the CHAMPUS database. DRG 435 would be split into two age-based DRGs.

*Comment*—The proposed rule states that for rehabilitative care "coverage during a single benefit period is limited to no more than one inpatient stay in hospitals subject to the CHAMPUS DRG-based payment system \* \* \*." Currently CHAMPUS allows up to 21 days of rehabilitative care during a benefit period, regardless of the number of admissions involved. If a beneficiary



leaves against medical advice, the stay will be less than 21 days—often significantly less—and prohibition of a subsequent admission would be reducing the benefit.

**Response**—This revision was not intended to be a change in the actual benefit for rehabilitative care but was simply a provision to recognize that length-of-stay is irrelevant under DRG-based payments. The intent of the current policy and of the revision is that only one full rehabilitative stay should be covered during a benefit period, but we agree that the revision as written could reduce the benefit in cases where the beneficiary leaves the hospital before the end of the treatment period. All cases where the beneficiary leaves against medical advice will be classified into DRG 433, and this would incorporate all those cases where the beneficiary leaves the hospital early. Therefore, we are revising the regulatory language to exempt all stays which group into DRG 433 from the limit of one stay per benefit period.

Additionally, CHAMPUS is currently planning an independent review of the overall benefit available for the treatment of both substance abuse and alcohol addiction. Based upon the results of this effort, future refinement in the reimbursement methodology may be necessary.

**Comment**—DRG 435 will be divided into two age-based DRGs, but it is not clear which DRG will include patients who are 21 years old.

**Response**—DRG 900 will be for beneficiaries 21 years old and younger, while DRG 901 will be for beneficiaries older than 21.

**Comment**—A number of commenters opposed payment under the CHAMPUS DRG-based payment system for inpatient alcohol and drug abuse services delivered to CHAMPUS beneficiaries in PPS-exempt hospitals and distinct part hospital units, and also in alcohol and drug abuse hospitals and distinct part units. They contended that current DRGs do not adequately capture or reflect legitimate differences in treatment practices and resource use in exempt and specialty alcohol and drug abuse facilities and units.

**Response**—Last year when Medicare issued its final rule to include coverage of alcohol/drug abuse cases under DRGs this same concern was addressed. HCFA indicated that there was a diversity of medical opinion regarding the efficacy of various treatment practices and that evidence had not been presented that some treatments are the optimum or preferred or, conversely, that other treatment modalities are

ineffective and, therefore, should be deemed noncovered.

HCFA further indicating that there is as much diversity in treatment patterns and modalities among specialized alcohol/drug hospitals and units as there is between prospective payment hospitals and specialized facilities and that, in the face of such diversity, it is neither necessary nor appropriate to preserve old payment distinctions or to establish new ones. (52 FR 33038)

Nevertheless, we believe that valid arguments have been made to reimburse all services in psychiatric specialty hospitals under the same procedures. Therefore, we have decided that DRG-based payments will apply only to alcohol/drug abuse services provided in a general hospital setting (scatter beds) and alcohol and drug abuse hospitals and distinct units, while alcohol/drug abuse services provided in psychiatric specialty hospitals and units will be reimbursed under the mental health reimbursement procedures (a final rule on these procedures is being published separately).

It should be noted that with this change in coverage of alcohol/drug abuse cases in psychiatric facilities along with the changes in the outlier policy of last year and other technical adjustments, payment for those alcohol/drug abuse cases remaining under the DRG system will reflect about the same reduction from charges as other DRG system cases. This differs from the impact projected in the notice of proposed rule making, which stated that implementation of DRG-based reimbursement would result in no reduction in total payment for these services. Nevertheless, when alcohol/drug abuse cases in psychiatric hospitals are also considered, the overall reimbursement for these cases in both payment systems is substantially above the average DRG impact.

**Comment**—It is premature to institute a DRG payment system for alcohol/drug abuse services for all ages of CHAMPUS beneficiaries with the only accommodation being the splitting of DRG 435 into two age groups.

**Response**—We disagree. As promised in last year's final rule, we have spent the past year studying the effect of DRG-based payments on alcohol/drug abuse services. As a result of this study, which incorporated the results of the RAND Corporation analysis, we concluded that, with the exception of DRG 435, application of our DRG-based payment system to alcohol/drug abuse services would result in equitable payments for these services. Moreover, in light of our decision to apply the DRG-based payments only to those services

provided in general hospital settings and alcohol/drug abuse hospitals and distinct units, we are actually implementing a system essentially identical to Medicare's, upon which our entire DRG-based payment system is modeled.

**Comment**—CHAMPUS did not consult the alcohol and drug treatment industry about the study results or the impact of the proposed changes.

**Response**—That is the purpose of publishing a proposed rule—to solicit comments from the industry and from other interested entities.

**Comment**—The proposal would underpay specialty hospitals and overpay treatment in medical-surgical beds. This would redistribute payments from specialty hospitals to general hospitals.

**Response**—The DRG system distinguishes by type of care and not by type of hospital. As stated previously, Medicare found it inappropriate to establish payment distinctions between alcohol/drug specialty hospitals and general hospitals for such care.

**Comment**—Assuming the DRG weights are similar to the weights established by the Medicare Program, this will result in substantial losses to some hospitals.

**Response**—Just as for all DRG-based payments, those hospitals which provide services efficiently will fare better than inefficient hospitals. That is one of the primary incentives behind DRG-based payments, and we think this is a positive, rather than a negative, aspect of this payment system.

**Comment**—The position CHAMPUS has taken is contradictory to the results of the RAND Corporation study which indicated these services should be exempt.

**Response**—This is incorrect. The RAND Corporation study did not indicate that these services should be exempt and reported that alcohol/drug abuse admissions under CHAMPUS appear to be relatively homogeneous.

**Comment**—The proposal to split DRG 435 based on age should be made by increasing the relative weight of the DRG. The proposed split of this DRG by the fiscal intermediary will result in unnecessary administrative duties for the provider and intermediary.

**Response**—We are splitting this DRG because our data indicates that there is a clear dichotomy in the costs of treating older and younger patients who are grouped into this DRG. Increasing the relative weight of this DRG would not recognize this difference—it would either consistently overpay or underpay one group depending on how high the



relative weight is set. Moreover, since patient age is already always on CHAMPUS claims, this split with create little additional administrative work for the fiscal intermediaries and no additional work for providers.

#### V. Children's Hospitals (Section 199.14(a)(1)(iii)(E)(4))

Implementation of this area has been postponed and a separate final rule will be published in the near future.

#### VI. Neonate Services (Sections 199.14(a)(1)(i)(A) and 199.14(a)(1)(i)(B)(1))

Implementation of this area has been postponed and a separate final rule will be published in the near future.

#### VII. Outliers (Sections 199.14(a)(1)(iii)(E)(1), 199.14(a)(1)(iii)(E)(1)(i)(bb), and 199.14(a)(1)(iii)(E)(1)(ii))

The outlier policy is changed to increase the outlier thresholds, but retain the higher marginal cost factor for cost outliers, and to give precedence to whichever type of outlier results in the greater payment.

*Comment*—The outlier thresholds applied under Medicare are not necessarily appropriate for CHAMPUS. CHAMPUS should develop a separate outlier policy based on the CHAMPUS population only.

*Response*—We agree that the actual threshold amounts applied under Medicare are not appropriate for CHAMPUS because of the differences in patient populations. However, we think that the procedures and policies established by Medicare for calculating cost and long-stay outlier thresholds are reasonable and that the policies should continue to be the same for both the Medicare PPS and for the CHAMPUS DRG-based payment system. Of course, the actual thresholds used under our system will be different from Medicare's, since we will use the CHAMPUS database to calculate the thresholds. In addition, unlike Medicare, we use short-stay outliers as well. The short-stay outlier policy remains unchanged.

*Comment*—The thresholds should be lower and total payments should be higher, since CHAMPUS has few patients and civilian hospitals tend to get a selective, referred population of sicker patients.

*Response*—We don't agree that lowering the thresholds and raising the payments is necessary. For the most part, treatment of CHAMPUS beneficiaries at military treatment facilities is determined based on the services available rather than the

condition of the individual patients. Moreover, any tendency toward sicker patients will be reflected in the ASAs calculated from the CHAMPUS database. If, in fact, civilian hospitals are treating sicker CHAMPUS patients, the ASAs will be higher, and this, in turn, will automatically increase outlier payments proportionately.

*Comment*—The outlier per diem rates should be increased to 90% (for cost outliers) and 75% (for day outliers).

*Response*—We have increased the marginal cost factor for cost outliers in accordance with those used in the Medicare PPS, and we think the rationale provided by the Health Care Financing Administration for making these changes is equally applicable to CHAMPUS. We don't think further increases are justified.

*Comment*—CHAMPUS should make interim payments for outliers.

*Response*—We agree. There are cases which involve either long-stay or cost outliers for which we believe interim payments are justified. Accordingly, we will make interim payments on certain claims if the following conditions are met:

1. The claim must qualify as either a long-stay or cost outlier.
2. The billed charge for the interim bill must not be less than \$90,000 nor greater than \$99,999.99.
3. Multiple claims for single individuals must be submitted in chronological order.

In submitting interim bills, hospitals must ensure that the parameters in condition 2 are met. Moreover, it will be imperative that hospitals ensure that, in cases where interim bills have been submitted, the final bill is annotated as such.

*Comment*—The threshold has been increased by 100% and will result in additional financial burden being placed on the hospital.

*Response*—The threshold for both long-stay and cost outliers has been increased, but not by 100% for long-stay outliers. Even so, just as Medicare has done, we have simultaneously increased the marginal cost factor for cost outliers. Also, instead of always giving precedence to day outliers, the outlier which results in the greater payment will take precedence. The net effect of these changes is likely to be to increase the number of cases which qualify as cost outliers, and the payment amounts to cost outliers, thereby better recognizing high cost cases. These changes are not likely to result in additional financial burden on hospitals. It is noteworthy to point out that unlike Medicare, we are not using hospital-specific cost-to-charge ratios to

determine cost outlier payments. The relatively small number of CHAMPUS cost outlier cases and the fact that they are located largely in areas with cost-to-charge ratios below the national average, makes use of a national ratio an appropriate approach.

#### VIII. Other Minor Changes and Clarifications to the Existing Procedures

##### A. Grouper Program (Section 199.14(a)(1)(i)(A))

The CHAMPUS DRG-based payment system will use the most recently available grouper for the Medicare PPS.

There is a typographical error on the eleventh line of the middle column on page 20581 of the proposed rule. It states that "we are proposing to use the FY 1988 Medicare Grouper beginning October 1, 1988." It should be the FY 1989 Medicare Grouper.

##### B. ASA Update Factor (Section 199.14(a)(1)(iii)(F))

CHAMPUS will use the same update factors used for the Medicare PPS.

*Comment*—HCFA's calculation of the market basket is erroneous. CHAMPUS should recalculate the hospital market basket to reflect properly wage and salary costs. Update factors should reflect the full market basket inflation index.

*Response*—We think it is important that the government promulgate a uniform DRG update factor for both DRG systems, Medicare and CHAMPUS. Congress establishes this factor each year after considering input from PROPAC, the health care industry, and HCFA. HCFA will be evaluating the appropriateness of the market basket components in the future. The review will not be limited to one component but will cover the market basket as a whole, since changes in one component could be offset by opposite changes in other components.

##### C. Submission of Request for Payment of Capital and Direct Medical Education Costs (Section 199.14(a)(1)(iii)(G)(3))

CHAMPUS will reimburse hospitals for CHAMPUS' share of their capital and direct medical education expenses annually based on a request submitted from the hospital. The requirement that such requests must be submitted within ninety (90) days of the end of the hospital's Medicare cost reporting period has been eliminated.

We want to emphasize that hospitals are still required to submit a request for payment in order to be reimbursed for capital and direct medical education costs. Our proposed rule only changed



the requirement involving the deadline for submitting the request.

**Comment**—CHAMPUS should introduce some kind of interim payment or pay interest on capital/DME payments.

**Response**—The payments for these items will be sufficiently small, particularly relative to total hospital revenues, that the administrative cost of more frequent payments is not justified. Moreover, CHAMPUS does not have hospital cost information with which to formulate accurate estimates of interim payments for capital and direct medical education. Nor do we have the authority to pay interest on these costs.

**D. Clarification of Total Inpatient Days and CHAMPUS Inpatient Days (Section 199.14(a)(1)(iii)(G)(3)(vi) and 199.14(a)(1)(iii)(G)(3)(vii))**

Payment for capital and direct medical education will be based on the ratio of CHAMPUS inpatient days to total inpatient days. These two items have been clarified to ensure understanding that they apply only to days in units subject to the CHAMPUS DRG-based payment system.

**Comment**—CHAMPUS should use a real cost finding methodology or use a different ratio—e.g., CHAMPUS PPS-related charges to total charges.

**Response**—The per diem capital payment policy provides reasonable payments for capital and direct medical education costs, is consistent with the current Medicare capital per diem payment methodology for routine costs, and results in minimal reporting requirements for hospitals. A cost-finding method similar to Medicare's cost reporting mechanism is not in hospitals' interests, because it would burden them with extensive reporting requirements for CHAMPUS patients, a payer that generally accounts for a very small percentage of each hospital's total revenues. The method based on days is preferable to the second alternative—payments based on the ratio of CHAMPUS charges to total charges—since CHAMPUS days relate solely to CHAMPUS beneficiaries while CHAMPUS charges may reflect cost-shifting from other patients.

**Comment**—Reimbursement for capital and direct medical education costs is to be made only for units subject to DRG reimbursement. This precludes providers from receiving reimbursement for capital and direct medical education costs associated with exempt units. We suggest that inpatient days provided in units not subject to DRG reimbursement also be included in this computation.

**Response**—This is not correct. CHAMPUS payments for units exempt

from the CHAMPUS DRG-based payment system continue to be made based on the hospital's billed charges. Capital and direct medical education expenses are two of many items which comprise a hospital's charges.

**E. Percentage Reductions in Capital Payments (Section 199.14(a)(1)(iii)(G)(1))**

Capital payments under the CHAMPUS DRG-based payment system will be reduced according to the statutorily-required reductions under the Medicare PPS.

**Comment**—Any reduction in payment for capital is inappropriate since this is a fixed cost and not subject to incentive-based controls.

**Response**—Just as for the update factor, the capital reduction percentages are congressionally-established for Medicare. As a similar government program, we think it is important to comply with these requirements.

**Comment**—Pub.L. 100-119, the Debt Limit Extension Act, provides that the capital payment reduction used under Medicare for October 1, 1987, through November 20, 1987, is to be 3.5 percent rather than 7 percent. Since CHAMPUS is following Medicare in this area, this change should be made.

**Response**—We agree, and we will make the necessary change. Actually, this will not require a regulatory change, since the actual percentage reductions are not contained in the regulation.

**F. Payment for Hospital-Based Professional and Nurse Anesthetist Services (Section 199.14(a)(1)(ii)(C))**

We corrected a cross-reference in this section.

**Comment**—Revised paragraph (a)(1)(ii)(C) refers to paragraph (f) of § 199.14. Paragraph (e) discusses reimbursement of individual health-care professionals and other non-institutional healthcare providers using the allowable charge methodology. Would the correct cross-reference be to section (e) rather than to section (f)?

**Response**—The reference to paragraph (f) is correct. A new paragraph (e) regarding birthing centers was recently added, and the existing paragraph (e) was changed to (f).

## IX. Mental Health Services

In our proposed rule we proposed continuing the exemption for all services which would otherwise be paid under one of the psychiatric DRGs which are numbers 424-432. We noted that we had developed an alternative payment system for these services, and we would publish a separate Notice of Proposed Rulemaking on it. That proposed rule

was also published on June 3 (53 FR 20585).

As a result of the comments we received on that proposed rule, as well as discussions with interested organizations which we have had since publication of the proposed rule, we have decided to make a number of changes to the procedures for reimbursing psychiatric services. These changes will be discussed in detail in a final rule to be published on or about the same date this final rule is published.

One change which we have made which impacts the CHAMPUS DRG-based payment system involves psychiatric services provided in general hospital settings. These services will no longer be exempt from the CHAMPUS DRG-based payment system. They will be reimbursed using existing DRGs 424-432 and the weights and rates attached to this final rule. Psychiatric hospitals and psychiatric units will continue to be exempt, so psychiatric services provided in them also will continue to be exempt from DRG-based reimbursement.

This change conforms to the Medicare PPS on which the CHAMPUS DRG-based payment system is modeled. Under the Medicare PPS, all mental health services provided in general hospital settings are subject to DRG-based payments.

## X. Summary of Regulation Changes

For the convenience of the reader, following is a summary of the changes we are making to the proposed rule as a result of public comments. The reader is referred to the detailed discussions above for a complete explanation of the rationale for these changes.

### A. Alcohol/Drug Abuse Services

Alcohol/drug abuse services in Medicare PPS-exempt psychiatric hospitals and units will continue to be exempt from the CHAMPUS DRG-based payment system. Stays classified in DRG 433 will not count toward the limit of one rehabilitative stay per benefit period.

### B. Children's Hospitals

Inclusion of children's hospitals will be addressed in the final rule to be published shortly.

### C. Neonate Services

Inclusion of neonate services will be addressed in the final rule to be published shortly.



**D. Outlier Payments**

We will begin making interim payments for outliers under certain conditions.

**E. Psychiatric Services**

Psychiatric services provided in general hospital settings will be subject to the CHAMPUS DRG-based payment system.

**F. Effective Date**

The effective date has been changed to apply to admissions occurring on or after October 1, 1988.

**XI. Regulatory Procedures**

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would:

Result in annual effect on the national economy of \$100 million or more;

Result in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic regions; or

Have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or import markets.

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have a significant impact on a substantial number of small entities. For purposes of the Regulatory Flexibility Act, we consider small entities to include many nonprofit and for-profit hospitals.

Under both the Executive Order and the Regulatory Flexibility Act, such analyses must, when prepared, examine regulatory alternatives which minimize unnecessary burden or otherwise assure that regulations are cost-effective.

We do not consider this final rule to be a major rule under Executive Order 12291. Moreover, this rule will not significantly affect a substantial number of small entities. The changes set forth in this final rule, taken as a whole, would have an annual impact on the hospital industry of substantially less than \$100 million. Additionally, the economic impact, which is solely a function of revised federal payments, on almost all individual hospitals is very little in view of the small percentage of hospital revenue provided by CHAMPUS and the small change in CHAMPUS payments represented by this final rule.

Therefore, no regulatory impact analysis is required.

**XII. Other Required Information****A. Effective Date**

This final rule is effective for inpatient hospital admissions occurring on or after October 1, 1988.

**B. Paperwork Reduction Act**

This notice does not impose information collection requirements. Therefore, it does not need to be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3511).

**List of Subjects in 32 CFR Part 199**

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

**PART 199—[AMENDED]**

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.4 is amended by revising paragraphs (e)(4)(i) and (e)(4)(ii)(A) to read as follows:

**§ 199.4 Basic program benefits.**

(e) \* \* \*

(4) \* \* \*

(i) *Emergency and inpatient hospital services.* Emergency and inpatient hospital services are covered when medically necessary for the active medical treatment of the acute phases of alcohol withdrawal (detoxification), for stabilization, and for treatment of medical complications of alcoholism. Emergency and inpatient hospital services are considered medically necessary only when the patient's condition is such that the personnel and facilities of a hospital are required. Stays provided for alcohol rehabilitation in a hospital-based rehabilitation facility are covered, subject to the provisions of paragraph (e)(4)(ii) of this section. Inpatient hospital services also are subject to the provisions regarding the limit on inpatient mental health services.

(ii) \* \* \*

(A) *Rehabilitative care.* Rehabilitative care in an authorized alcohol rehabilitative facility, whether free-standing or hospital-based, is covered on either a residential or partial care (day or night program) basis. Coverage during a single benefit period is limited to no more than one inpatient stay (exclusive of stays classified in DRG 433) in hospitals subject to the

CHAMPUS DRG-based payment system or 21 days in a DRG-exempt facility for rehabilitation care. If the patient is medically in need of alcohol detoxification, but does not require the personnel or facilities of a general hospital setting, detoxification services are covered in addition to the rehabilitative care, but in a DRG-exempt facility detoxification services are limited to 7 days. The medical necessity for the detoxification must be documented. Any detoxification services provided by the alcohol rehabilitation facility must be under general medical supervision.

3. Section 199.14 is amended by revising paragraphs (a)(1) introductory text, (a)(1)(i)(A), (a)(1)(i)(C)(3), and (a)(1)(ii)(C) introductory text; by removing paragraphs (a)(1)(ii)(C)(2) and (a)(1)(ii)(C)(3) and redesignating paragraphs (a)(1)(ii)(C)(4) through (8) as paragraphs (a)(1)(ii)(C)(2) through (6); by adding new paragraphs (a)(1)(ii)(C)(7), (a)(1)(ii)(C)(8) and (a)(1)(ii)(C)(9); by removing paragraph (a)(1)(ii)(D)(3) and redesignating paragraphs (a)(1)(ii)(D)(4) through (9) as paragraphs (a)(1)(ii)(D)(3) through (8); by revising redesignated paragraph (a)(1)(ii)(D)(3); by revising paragraphs (a)(1)(iii) introductory text; (a)(1)(iii)(A)(3), (a)(1)(iii)(D)(1), (a)(1)(iii)(D)(2), (a)(1)(iii)(D)(4), (a)(1)(iii)(D)(5), (a)(1)(iii)(E)(1) introductory text, (a)(1)(iii)(E)(1)(i)(bb), (a)(1)(iii)(E)(1)(i), (a)(1)(iii)(G)(3) introductory text, (a)(1)(iii)(G)(3)(vi), and (a)(1)(iii)(G)(3)(vi) to read as follows:

**§ 199.4 Basic program benefits.**

(a) \* \* \*

(1) *CHAMPUS DRG-based payment system.* Under the CHAMPUS DRG-based payment system, payment for the operating costs of inpatient hospital services furnished by hospitals subject to the system is made on the basis of prospectively-determined rates and applied on a per discharge basis using Diagnosis Related Groups (DRGs). Payments under this system will include a differentiation for urban (using large urban and other urban areas) and rural hospitals and an adjustment for area wage differences and indirect medical education costs. Additional payments will be made for capital costs, direct medical education costs, and outlier cases.

(i) \* \* \*

(A) *DRGs used.* The CHAMPUS DRG-based payment system will use the same DRGs used in the most recently available grouper for the Medicare



Prospective Payment System, except as necessary to recognize distinct characteristics of CHAMPUS beneficiaries and as described in instructions issued by the Director, OCHAMPUS.

(C) \*\*\*

(3) *Claims priced as of date of admission.* Except for interim claims submitted for qualifying outlier cases, all claims reimbursed under the CHAMPUS DRG-based payment system are to be priced as of the date of admission, regardless of when the claim is submitted.

(ii) \*\*\*

(C) *Services exempt from the DRG-based payment system.* The following hospital services, even when provided in a hospital subject to the CHAMPUS DRG-based payment system, are exempt from the CHAMPUS DRG-based payment system. The services in paragraphs (a)(1)(ii)(C) (1) through (4) and (7) through (9) of this section shall

be reimbursed under the procedures in paragraph (a)(2) of this section, and the services in paragraphs (a)(1)(ii)(C) (5) and (6) of this section shall be reimbursed under the procedures in paragraph (f) of this section.

(7) All services related to discharges involving pediatric bone marrow transplants (patient under 18 at admission).

(8) All services related to discharges involving children who have been determined to be HIV seropositive (patient under 18 at admission).

(9) All services related to discharges involving pediatric cystic fibrosis (patient under 18 at admission).

(D) \*\*\*

(3) *Psychiatric and rehabilitation units (distinct parts).* A psychiatric or rehabilitation unit which is exempt from the Medicare prospective payment system is also exempt from the CHAMPUS DRG-based payment system. In order for a distinct unit which does not participate in Medicare to be

exempt from the CHAMPUS DRG-based payment system, it must meet the same criteria (as determined by the Director, OCHAMPUS, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in § 412.23 of Title 42 CFR.

(iii) *Determination of payment amounts.* The actual payment for an individual claim under the CHAMPUS DRG-based payment system is calculated by multiplying the appropriate adjusted standardized amount (adjusted to account for area wage differences using the wage indexes used in the Medicare program) by a weighting factor specific to each DRG.

(A) \*\*\*

(3) *Indirect medical education standardization.* To standardize the charges for the cost effects of indirect medical education factors, each teaching hospital's charges will be divided by 1.0 plus the following ratio on a hospital-specific basis:

$$1.43 \times \left\{ \left( 1.0 + \frac{\text{number of interns + residents}}{\text{number of beds}} \right)^{.5795} - 1.0 \right\}$$

(D) \*\*\*

(1) *Differentiate large urban, other urban, and rural charges.* All charges in the database shall be sorted into large urban, other urban, and rural groups

(using the same definitions for these categories used in the Medicare program). The following procedures will be applied to each group.

(2) *Indirect medical education standardization.* To standardize the

charges for the cost effects of indirect medical education factors, each teaching hospital's charges will be divided by 1.0 plus the following ratio on a hospital-specific basis:

$$1.43 \times \left\{ \left( 1.0 + \frac{\text{number of interns + residents}}{\text{number of beds}} \right)^{.5795} - 1.0 \right\}$$

(4) *Apply the cost to charge ratio.*

Each charge is to be reduced to a representative cost by using the Medicare cost to charge ratio. This amount shall be increased by 1 percentage point in order to reimburse hospitals for bad debt expenses attributable to CHAMPUS beneficiaries.

(5) *Preliminary base year standardized amount.* A preliminary base year standardized amount shall be calculated by summing all costs in the database applicable to the large urban, other urban, or rural group and dividing by the total number of discharges in the respective group.

(1) *Outliers.* The DRG-based payment to a hospital shall be adjusted for atypical cases. These outliers are those cases that have either an unusually short length-of-stay or extremely long length-of-stay or that involve extraordinarily high costs when compared to most discharges classified in the same DRG. Cases which qualify as both a length-of-stay outlier and a cost outlier shall be paid at the rate which results in the greater payment.

(i) \*\*\*

(bb) *Long-stay outliers.* Any discharge which has a length-of-stay (LOS) exceeding the lesser of 3.00 standard deviations or 24 days (1.94 standard deviations or 17 days for neonate services and for services in children's

hospitals) from the DRG's geometric mean LOS shall be classified as a long-stay outlier. Long-stay outliers shall be reimbursed the DRG-based amount plus 60 percent (90 percent for DRGs related to burn cases) of the per diem rate for the DRG for each covered day of care beyond the long-stay outlier cutoff. The per diem rate shall equal the DRG amount divided by the geometric mean LOS for the DRG.

(ii) *Cost outliers.* Any discharge which has standardized costs that exceed a threshold of the greater of two times the DRG-based amount or \$27,000 (\$13,500 for neonate services and for services in children's hospitals) shall qualify as a cost outlier. The standardized costs shall be calculated by multiplying the



total charges by the factor described in paragraph (a)(1)(iii)(D)(4) of this section and adjusting this amount for indirect medical education costs. Cost outliers shall be reimbursed the DRG-based amount plus 80 percent (90 percent for DRGs related to burn cases) of all costs exceeding the threshold. Additional payment for cost outliers shall be made only upon request by the hospital.

(G) \* \* \*

(3) *Information necessary for payment of capital and direct medical education costs.* Any hospital subject to the CHAMPUS DRG-based payment system which wishes to be reimbursed for allowed capital and direct medical education costs must submit a request to the CHAMPUS contractor. Such request shall cover the one-year period corresponding to the hospital's Medicare

cost-reported period. The first such request may cover a period of less than a full year—from the effective date of the CHAMPUS DRG-based payment system to the end of the hospital's Medicare cost-reporting period. All costs reported to the CHAMPUS contractor must correspond to the costs reported on the hospital's Medicare cost report. (If these costs change as a result of a subsequent audit by Medicare, the revised costs are to be reported to the hospital's CHAMPUS contractor within 30 days of the date the hospital is notified of the change.) The request must be signed by the hospital official responsible for verifying the amounts and shall contain the following information.

\* \* \* \* \*

(vi) Total inpatient days provided to all patients in units subject to DRG-based payment.

(vii) Total allowed CHAMPUS inpatient days provided in units subject to DRG-based payment.

\* \* \* \* \*

Linda Bynum,

*Alternate OSD Federal Register Liaison Office, Department of Defense, August 25, 1988.*

Table 1—CHAMPUS Weights and Threshold Summary.

**Editorial Note:** This Table will not appear in the Code of Federal Regulations.

The following summary shows the final CHAMPUS DRG weights as well as arithmetic mean lengths of stay, geometric mean lengths of stay, and outlier thresholds.

BILLING CODE 3810-01-M



## CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
1	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.8906	14.3	11.1	1	35
2	CRANIOTOMY FOR TRAUMA AGE >17	5.1928	14.9	9.0	1	32
3	CRANIOTOMY AGE 0-17	2.7063	10.8	6.7	1	30
4	SPINAL PROCEDURES	2.4109	11.3	8.7	1	32
5	EXTRACRANIAL VASCULAR PROCEDURES	1.6679	6.3	5.4	1	29
6	CARPAL TUNNEL RELEASE	0.5342	1.9	1.6	1	8
7	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	2.7686	15.4	8.9	1	32
8	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	0.8351	3.5	2.4	1	26
9	SPINAL DISORDERS & INJURIES	2.7306	17.0	9.5	1	33
10	NERVOUS SYSTEM NEOPLASMS W CC	1.4240	8.8	6.1	1	30
11	NERVOUS SYSTEM NEOPLASMS W/O CC	0.9136	6.0	4.1	1	28
12	DEGENERATIVE NERVOUS SYSTEM DISORDERS	1.7589	12.5	6.9	1	30
13	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	1.1730	9.3	6.5	1	30
14	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.5439	8.4	5.6	1	29
15	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	0.7171	3.8	3.0	1	22
16	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.6307	6.7	4.9	1	28
17	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	0.9857	5.7	3.3	1	27
18	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	0.9851	6.8	5.0	1	29
19	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	0.6634	4.8	3.5	1	27
20	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.8410	10.6	7.5	1	31
21	VIRAL MENINGITIS	0.5536	3.7	3.3	1	15
22	HYPERTENSIVE ENCEPHALOPATHY	0.7190	4.6	3.7	1	27
23	NONTRAUMATIC STUPOR & COMA	1.2273	6.3	3.6	1	27
24	SEIZURE & HEADACHE AGE >17 W CC	0.9142	5.0	3.7	1	27
25	SEIZURE & HEADACHE AGE >17 W/O CC	0.5800	3.9	2.9	1	26
26	SEIZURE & HEADACHE AGE 0-17	0.4421	3.0	2.3	1	18
27	TRAUMATIC STUPOR & COMA, COMA >1 HR	2.9875	9.9	5.5	1	29
28	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	2.6994	9.8	5.4	1	29
29	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	0.7859	4.3	2.8	1	26



## CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
30	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	0.4660	2.7	1.8	1	18
31	CONCUSSION AGE >17 W CC	0.7054	3.5	2.9	1	20
32	CONCUSSION AGE >17 W/O CC	0.4183	2.3	1.8	1	12
33	CONCUSSION AGE 0-17	0.2783	1.5	1.3	1	5
34	OTHER DISORDERS OF NERVOUS SYSTEM W CC	1.4616	7.6	4.5	1	28
35	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	0.7799	5.4	3.0	1	27
36	RETINAL PROCEDURES	0.7856	2.8	2.4	1	13
37	ORBITAL PROCEDURES	0.6762	2.6	2.0	1	14
38	PRIMARY IRIS PROCEDURES	0.3685*	2.8	2.2	1	17
39	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	0.6504	1.9	1.6	1	8
40	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	0.5523	2.1	1.7	1	11
41	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	0.4337	1.6	1.3	1	6
42	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	0.8381	2.8	2.3	1	14
43	WYPIKENA	0.2382	3.6	3.0	1	19
44	ACUTE MAJOR EYE INFECTIONS	0.5113	4.3	3.6	1	21
45	NEUROLOGICAL EYE DISORDERS	0.6579	3.5	2.9	1	20
46	OTHER DISORDERS OF THE EYE AGE >17 W CC	0.5494	3.8	2.9	1	26
47	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	0.4877	3.5	2.6	1	22
48	OTHER DISORDERS OF THE EYE AGE 0-17	0.3925	3.1	2.4	1	20
49	MAJOR HEAD & NECK PROCEDURES	3.3305	12.5	9.1	1	33
50	SIALOADENECTOMY	0.6846	2.2	1.9	1	8
51	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	0.6547	2.2	1.8	1	10
52	CLEFT LIP & PALATE REPAIR	0.6624	2.8	2.4	1	13
53	SINUS & MASTOID PROCEDURES AGE >17	0.6499	2.1	1.6	1	10
54	SINUS & MASTOID PROCEDURES AGE 0-17	0.7388	2.5	1.8	1	17
55	MISCELLANEOUS EAR, NOSE & THROAT PROCEDURES	0.5092	1.5	1.3	1	5
56	RHINOPLASTY	0.5126	1.5	1.3	1	5
57	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.6051	2.1	1.8	1	10
58	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.3544	1.2	1.1	1	2



## CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
59	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.3538	1.2	1.1	1	2
60	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.3189	1.1	1.1	1	2
61	MYRINGOTOMY W TUBE INSERTION AGE >17	0.5744	1.6	1.3	1	6
62	MYRINGOTOMY W TUBE INSERTION AGE 0-17	0.4248	2.0	1.5	1	10
63	OTHER EAR, NOSE & THROAT O.R. PROCEDURES	1.1101	3.5	2.6	1	23
64	EAR, NOSE & THROAT MALIGNANCY	1.0747	5.9	3.6	1	27
65	DYSEQUILIBRIUM	0.4757	3.1	2.6	1	15
66	EPISTAXIS	0.4990	3.6	3.0	1	18
67	EPIGLOTTITIS	1.0454	4.4	3.3	1	27
68	OTITIS MEDIA & URI AGE >17 W CC	0.6708	4.1	3.4	1	20
69	OTITIS MEDIA & URI AGE >17 W/O CC	0.5092	3.5	2.8	1	18
70	OTITIS MEDIA & URI AGE 0-17	0.3873	3.0	2.6	1	14
71	LARYNGOTRACHEITIS	0.3329	2.4	2.1	1	11
72	NASAL TRAUMA & DEFORMITY	0.4465	1.8	1.4	1	7
73	OTHER EAR, NOSE & THROAT DIAGNOSES AGE >17	0.6613	3.8	2.7	1	26
74	OTHER EAR, NOSE & THROAT DIAGNOSES AGE 0-17	0.4953	2.8	2.1	1	19
75	MAJOR CHEST PROCEDURES	3.2017	11.3	9.8	1	33
76	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.2876	10.4	7.7	1	31
77	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.2508	5.5	3.7	1	27
78	PULMONARY EMBOLISM	1.4055	8.6	7.5	1	31
79	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	2.9321	11.9	9.4	1	33
80	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	1.4588	8.3	6.8	1	30
81	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	1.5904	7.7	5.6	1	29
82	RESPIRATORY NEOPLASMS	1.4845	8.2	5.7	1	29
83	MAJOR CHEST TRAUMA W CC	1.5288	8.1	6.9	1	30
84	MAJOR CHEST TRAUMA W/O CC	0.7899	4.4	3.4	1	27
85	PLEURAL EFFUSION W CC	1.2645	7.6	6.0	1	29
86	PLEURAL EFFUSION W/O CC	0.7541	4.9	3.7	1	27
87	PULMONARY EDEMA & RESPIRATORY FAILURE	2.2541	7.7	5.6	1	29



## CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
88	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	1.3298	6.9	5.5	1	29
89	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	1.5597	7.6	6.4	1	30
90	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	0.9142	5.5	4.7	1	26
91	SIMPLE PNEUMONIA & PLEURISY AGE 0-17	0.5839	4.0	3.5	1	17
92	INTERSTITIAL LUNG DISEASE W CC	1.4641	6.4	5.0	1	29
93	INTERSTITIAL LUNG DISEASE W/O CC	0.9596	5.3	3.7	1	27
94	PNEUMOTHORAX W CC	1.6712	7.3	5.6	1	29
95	PNEUMOTHORAX W/O CC	0.7197	5.5	4.3	1	28
96	BRONCHITIS & ASTHMA AGE >17 W CC	1.1963	6.4	5.3	1	29
97	BRONCHITIS & ASTHMA AGE >17 W/O CC	0.7552	4.5	3.8	1	22
98	BRONCHITIS & ASTHMA AGE 0-17	0.5233	3.4	2.9	1	16
99	RESPIRATORY SIGNS & SYMPTOMS W CC	0.9279	4.5	3.5	1	27
100	RESPIRATORY SIGNS & SYMPTOMS W/O CC	0.5613	2.9	2.4	1	15
101	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	1.8780	7.1	5.1	1	29
102	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	0.8728	4.4	3.0	1	27
103	HEART TRANSPLANT	-	-	-	-	-
104	CARDIAC VALVE PROCEDURE W PUMP & W CARDIAC CATH	7.8309	17.0	14.4	2	38
105	CARDIAC VALVE PROCEDURE W PUMP & W/O CARDIAC CATH	5.9088	12.0	10.4	1	34
106	CORONARY BYPASS W CARDIAC CATH	5.7833	11.9	11.0	3	35
107	CORONARY BYPASS W/O CARDIAC CATH	4.9034	10.0	9.3	3	28
108	OTHER CARDIOTHORACIC OR VASCULAR PROCEDURES, W PUMP	4.8146	10.6	9.0	1	32
109	OTHER CARDIOTHORACIC PROCEDURES W/O PUMP	3.8267	10.8	8.1	1	32
110	MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP W CC	3.8511	11.7	9.8	1	33
111	MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP W/O CC	2.6178	8.6	7.8	2	30
112	VASCULAR PROCEDURES EXCEPT MAJOR RECONSTRUCTION W/O PUMP	2.1252	5.5	4.4	1	28
113	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	3.5725	19.1	15.8	2	39
114	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	2.0421	10.7	7.5	1	31
115	PERM CARDIAC PACEMAKER IMPLANT W AMI, HEART FAILURE OR SHOCK	3.9884*	15.2	12.8	1	37
116	PERM CARDIAC PACEMAKER IMPLANT W/O AMI, HEART FAILURE OR SHOCK	3.0480	6.7	5.3	1	29



## CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
117	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	3.0794	6.7	5.5	1	29
118	CARDIAC PACEMAKER DEVICE REPLACEMENT	2.5978	4.1	3.1	1	25
119	VEIN LIGATION & STRIPPING	0.7157	3.0	2.4	1	16
120	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	3.1701	12.5	7.9	1	31
121	CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE	2.2611	8.4	6.7	1	30
122	CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE	1.5538	6.1	4.9	1	28
123	CIRCULATORY DISORDERS W AMI, EXPIRED	2.6100	5.1	2.8	1	26
124	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	1.1405	4.5	3.3	1	27
125	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	0.7335	2.5	2.0	1	13
126	ACUTE & SUBACUTE ENDOCARDITIS	2.5882	13.5	9.6	1	33
127	HEART FAILURE & SHOCK	1.2991	6.8	5.3	1	29
128	DEEP VEIN THROMBOPHLEBITIS	0.8803	7.9	7.0	1	30
129	CARDIAC ARREST, UNEXPLAINED	2.5905	6.3	3.5	1	27
130	PERIPHERAL VASCULAR DISORDERS W CC	1.0276	6.6	4.8	1	28
131	PERIPHERAL VASCULAR DISORDERS W/O CC	0.6555	4.5	3.2	1	27
132	ATHEROSCLEROSIS W CC	1.0915	3.4	2.7	1	20
133	ATHEROSCLEROSIS W/O CC	0.9141	2.8	2.2	1	16
134	HYPERTENSION	0.6419	4.1	3.2	1	24
135	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	1.0508	4.8	3.4	1	27
136	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	0.7185	3.0	2.3	1	18
137	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	0.8386	4.0	2.3	1	26
138	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	1.0496	4.8	3.5	1	27
139	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	0.6438	3.2	2.5	1	19
140	ANGINA PECTORIS	0.8137	3.4	2.8	1	19
141	SYNCOPE & COLLAPSE W CC	0.6970	3.9	3.1	1	22
142	SYNCOPE & COLLAPSE W/O CC	0.5484	3.6	2.5	1	19
143	CHEST PAIN	0.6488	2.8	2.3	1	14
144	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.4879	6.7	4.7	1	28
145	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	0.7975	3.9	2.9	1	26



## CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
146	RECTAL RESECTION W CC	2.8738	13.3	12.1	3	36
147	RECTAL RESECTION W/O CC	2.1735	9.5	8.6	2	32
148	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	3.2908	13.2	11.5	2	35
149	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	2.0133	9.8	8.9	2	32
150	PERITONEAL ADHESIOLYSIS W CC	2.3419	11.0	9.1	1	33
151	PERITONEAL ADHESIOLYSIS W/O CC	1.4400	7.8	6.7	1	30
152	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	1.6413	7.7	6.2	1	30
153	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.0630	6.4	5.3	1	29
154	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC	3.7886	12.8	10.5	1	34
155	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC	1.9447	8.9	8.0	1	31
156	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	1.1014	6.5	4.7	1	28
157	ANAL & STOMAL PROCEDURES W CC	1.0358	5.4	4.1	1	28
158	ANAL & STOMAL PROCEDURES W/O CC	0.5837	3.2	2.6	1	18
159	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC	1.5256	6.8	5.2	1	29
160	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	0.7851	3.8	3.1	1	21
161	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	0.7187	3.4	2.8	1	19
162	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	0.5501	2.3	1.9	1	10
163	HERNIA PROCEDURES AGE 0-17	0.4494	1.7	1.4	1	7
164	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	2.3429	10.3	9.3	2	33
165	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.3788	6.8	6.1	1	26
166	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	1.3268	5.6	4.8	1	24
167	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	0.7007	3.4	3.1	1	11
168	MOUTH PROCEDURES W CC	1.1942	4.7	3.0	1	26
169	MOUTH PROCEDURES W/O CC	0.6373	2.3	1.8	1	14
170	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	2.6777	11.3	7.8	1	31
171	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.4286	6.9	5.0	1	29
172	DIGESTIVE MALIGNANCY W CC	1.6251	9.2	6.5	1	30
173	DIGESTIVE MALIGNANCY W/O CC	0.9008	6.8	4.3	1	28
174	G.I. HEMORRHOGE W CC	1.1294	5.4	4.3	1	28



## CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
175	G.I. HEMORRHAGE W/O CC	0.7295	4.0	3.3	1	21
176	COMPLICATED PEPTIC ULCER	0.9612	5.9	5.0	1	26
177	UNCOMPLICATED PEPTIC ULCER W CC	0.9500	5.7	4.6	1	28
178	UNCOMPLICATED PEPTIC ULCER W/O CC	0.6508	4.1	3.4	1	20
179	INFLAMMATORY BOWEL DISEASE	0.9589	6.8	5.5	1	29
180	G.I. OBSTRUCTION W CC	0.9706	6.3	5.0	1	29
181	G.I. OBSTRUCTION W/O CC	0.5526	3.9	3.2	1	21
182	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC	0.7255	4.6	3.6	1	27
183	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC	0.5577	3.6	2.9	1	21
184	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	0.3309	2.9	2.4	1	14
185	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17	0.7296	4.0	2.8	1	26
186	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17	0.4865	3.0	2.4	1	17
187	DENTAL EXTRACTIONS & RESTORATIONS	0.6841	2.4	2.1	1	11
188	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	1.0194	5.6	4.2	1	28
189	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	0.5477	3.5	2.6	1	25
190	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	0.3674	2.5	1.8	1	13
191	MAJOR PANCREAS, LIVER & SHUNT PROCEDURES	6.0579	21.4	17.3	2	41
192	MINOR PANCREAS, LIVER & SHUNT PROCEDURES	3.1866	12.5	10.4	1	34
193	BILIARY TRACT PROC EXCEPT TOT CHOLECYSTECTOMY W CC	3.5776	15.6	13.1	2	37
194	BILIARY TRACT PROC EXCEPT TOT CHOLECYSTECTOMY W/O CC	2.1535	10.1	8.7	1	32
195	TOTAL CHOLECYSTECTOMY W C.D.E. W CC	1.8450	9.0	7.9	1	31
196	TOTAL CHOLECYSTECTOMY W C.D.E. W/O CC	1.5126	7.3	6.8	2	21
197	TOTAL CHOLECYSTECTOMY W/O C.D.E. W CC	1.4562	7.0	6.2	1	25
198	TOTAL CHOLECYSTECTOMY W/O C.D.E. W/O CC	1.0410	5.3	5.0	1	15
199	HEPATOBIILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	3.0438	15.2	12.8	2	36
200	HEPATOBIILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	2.5893	9.1	6.6	1	30
201	OTHER HEPATOBIILIARY OR PANCREAS O.R. PROCEDURES	2.3709	8.6	6.2	1	30
202	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.6708	8.8	6.1	1	30
203	MALIGNANCY OF HEPATOBIILIARY SYSTEM OR PANCREAS	1.2468	7.6	4.9	1	28



## CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
204	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.2518	7.1	5.4	1	29
205	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	1.7774	8.5	5.7	1	29
206	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	0.6487	4.5	3.0	1	27
207	DISORDERS OF THE BILIARY TRACT W CC	1.0304	5.4	4.0	1	27
208	DISORDERS OF THE BILIARY TRACT W/O CC	0.5522	3.3	2.7	1	20
209	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES	2.9237	10.5	9.8	3	28
210	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC	2.7024	13.0	11.1	2	35
211	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	1.8874	9.3	7.9	1	31
212	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	1.5887	8.9	6.2	1	30
213	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	2.3629	11.4	7.9	1	31
214	BACK & NECK PROCEDURES W CC	2.0402	10.4	8.6	1	32
215	BACK & NECK PROCEDURES W/O CC	1.3175	6.9	5.9	1	29
216	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	1.8298	9.1	5.0	1	28
217	WND DEBRID & SKN GRFT EXCEPT HAND, FOR MUSCULET & CONN TISS DIS	2.5665	11.9	6.4	1	30
218	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W CC	1.9567	9.1	7.0	1	31
219	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W/O CC	1.0607	4.7	3.9	1	25
220	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE 0-17	0.8503	3.7	2.6	1	26
221	KNEE PROCEDURES W CC	1.6061	6.8	4.8	1	28
222	KNEE PROCEDURES W/O CC	0.8893	3.2	2.6	1	17
223	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	0.9542	3.7	2.8	1	23
224	SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC	0.7684	2.6	2.1	1	12
225	FOOT PROCEDURES	0.7505	2.9	2.3	1	16
226	SOFT TISSUE PROCEDURES W CC	1.1823	5.7	3.4	1	27
227	SOFT TISSUE PROCEDURES W/O CC	0.7165	3.0	2.3	1	18
228	MAJOR THUMB OR JOINT PROC, OR OTH HAND OR WRIST PROC W CC	0.8480	2.9	2.2	1	19
229	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	0.6313	2.1	1.7	1	10
230	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	0.6652	3.1	2.0	1	21
231	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR	0.8556	3.6	2.3	1	26
232	ARTHROSCOPY	0.7381	2.8	2.0	1	19



## CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
233	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC	2.0759	10.4	7.5	1	31
234	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	1.0062	4.5	3.2	1	27
235	FRACTURES OF FEMUR	1.2289	12.3	6.9	1	30
236	FRACTURES OF HIP & PELVIS	1.1686	10.4	6.5	1	30
237	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	0.6258	4.3	3.1	1	27
238	OSTEOCHONDRITIS	1.4859	11.3	8.7	1	32
239	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY	1.3933	9.5	6.8	1	30
240	CONNECTIVE TISSUE DISORDERS W CC	1.6972	9.5	7.1	1	31
241	CONNECTIVE TISSUE DISORDERS W/O CC	0.7487	5.7	4.5	1	28
242	SEPTIC ARTHRITIS	1.2300	8.6	7.1	1	31
243	MEDICAL BACK PROBLEMS	0.6452	5.0	3.6	1	27
244	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	0.9941	6.4	4.8	1	28
245	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	0.7360	4.7	3.4	1	27
246	NON-SPECIFIC ARTHROPATHIES	0.8838	6.1	4.0	1	27
247	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	0.5930	4.3	3.1	1	27
248	TENDONITIS, MYOSITIS & BURSTITIS	0.5749	4.1	3.1	1	27
249	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	0.5694	4.0	2.7	1	26
250	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC	0.9778	6.2	4.4	1	28
251	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	0.5888	3.0	2.0	1	21
252	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	0.3151	1.3	1.2	1	3
253	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W CC	1.0754	6.8	4.5	1	28
254	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W/O CC	0.4753	3.5	2.6	1	26
255	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE 0-17	0.4006	2.9	2.0	1	19
256	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	0.6488	4.0	2.7	1	26
257	TOTAL MASTECTOMY FOR MALIGNANCY W CC	1.0861	5.1	4.6	1	20
258	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.9334	4.4	4.0	1	15
259	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	1.1331	4.8	3.7	1	27
260	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.7416	2.9	2.5	1	14
261	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	0.9167	2.7	2.3	1	13



## CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
262	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	0.5041	2.1	1.7	1	10
263	SKIN GRAFT &/OR DEBRID FOR SKIN ULCER OR CELLULITIS W CC	3.0922	19.0	12.5	1	36
264	SKIN GRAFT &/OR DEBRID FOR SKIN ULCER OR CELLULITIS W/O CC	1.8215	13.1	9.3	1	33
265	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC	1.7986	7.5	5.6	1	29
266	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC	0.8904	4.1	3.1	1	27
267	PERIANAL & PILONIDAL PROCEDURES	0.5057	2.6	2.1	1	14
268	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	0.6778	2.9	1.9	1	18
269	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.6362	7.5	5.4	1	29
270	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	0.7786	3.4	2.4	1	26
271	SKIN ULCERS	1.7878	11.1	8.3	1	32
272	MAJOR SKIN DISORDERS W CC	1.1128	7.3	5.6	1	29
273	MAJOR SKIN DISORDERS W/O CC	0.7338	5.7	4.1	1	28
274	MALIGNANT BREAST DISORDERS W CC	1.6943	9.5	5.9	1	29
275	MALIGNANT BREAST DISORDERS W/O CC	0.8495	6.0	4.2	1	28
276	NON-MALIGNANT BREAST DISORDERS	0.6040	3.5	2.7	1	24
277	CELLULITIS AGE >17 W CC	1.1753	7.5	6.3	1	30
278	CELLULITIS AGE >17 W/O CC	0.7188	5.1	4.3	1	25
279	CELLULITIS AGE 0-17	0.5161	4.1	3.4	1	20
280	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	0.6925	4.1	2.6	1	26
281	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	0.4715	2.9	2.2	1	18
282	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	0.3433	1.9	1.6	1	8
283	MINOR SKIN DISORDERS W CC	1.2224	6.6	4.4	1	28
284	MINOR SKIN DISORDERS W/O CC	0.4594	3.5	2.6	1	24
285	AMPUTAT OF LOWER LIMB FOR ENDOCRINE, NUTRIT, & METABOL DISORDERS	4.3254	21.6	15.3	1	39
286	ADRENAL & PITUITARY PROCEDURES	2.3578	8.6	7.9	2	27
287	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	2.3225	15.2	11.1	1	35
288	O.R. PROCEDURES FOR OBESITY	1.7995	6.0	5.6	1	16
289	PARATHYROID PROCEDURES	1.1615	4.9	4.0	1	26
290	THYROID PROCEDURES	0.7642	3.0	2.6	1	13



## CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
291	THYROID GLAND PROCEDURES	0.4850	1.3	1.2	1	3
292	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC	3.2008	12.2	9.1	1	33
293	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.2284	6.4	5.1	1	29
294	DIABETES AGE >35	0.7553	5.8	4.9	1	27
295	DIABETES AGE 0-35	0.7125	4.6	3.8	1	27
296	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	1.1088	6.9	4.9	1	28
297	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	0.6680	5.0	3.4	1	27
298	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	0.4180	3.5	2.7	1	20
299	INBORN ERRORS OF METABOLISM	0.8314	5.1	3.9	1	27
300	ENDOCRINE DISORDERS W CC	0.9499	6.2	4.8	1	28
301	ENDOCRINE DISORDERS W/O CC	0.5407	4.1	2.7	1	26
302	KIDNEY TRANSPLANT	5.7970	16.9	14.9	3	38
303	KIDNEY, URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM	2.5908	10.5	9.6	2	33
304	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC	2.3113	9.8	7.8	1	31
305	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC	1.4377	6.2	4.7	1	28
306	PROSTATECTOMY W CC	1.3672	6.4	5.4	1	29
307	PROSTATECTOMY W/O CC	0.8715	3.9	3.5	1	16
308	MINOR BLADDER PROCEDURES W CC	1.8341	8.1	5.5	1	29
309	MINOR BLADDER PROCEDURES W/O CC	1.1595	5.9	4.3	1	28
310	TRANSURETHRAL PROCEDURES W CC	1.0101	4.2	3.2	1	27
311	TRANSURETHRAL PROCEDURES W/O CC	0.7474	2.9	2.4	1	16
312	URETHRAL PROCEDURES, AGE >17 W CC	0.7786	3.4	2.8	1	20
313	URETHRAL PROCEDURES, AGE >17 W/O CC	0.5733	3.0	2.1	1	23
314	URETHRAL PROCEDURES, AGE 0-17	0.5143	2.7	2.0	1	21
315	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.2674	9.2	6.6	1	30
316	RENAL FAILURE	1.4627	7.7	5.3	1	29
317	ADMIT FOR RENAL DIALYSIS	0.3507*	2.8	2.0	1	18
318	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.4447	7.8	5.3	1	29
319	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	0.9054	5.3	3.5	1	27



## CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
320	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	1.0164	5.9	4.9	1	28
321	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	0.6618	4.4	3.8	1	20
322	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	0.5100	4.1	3.4	1	20
323	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	0.8514	3.0	2.2	1	19
324	URINARY STONES W/O CC	0.4695	2.2	1.8	1	11
325	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	0.6597	4.2	3.4	1	27
326	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	0.5591	3.3	2.7	1	18
327	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	0.3919	2.4	2.0	1	12
328	URETHRAL STRICTURE AGE >17 W CC	0.6250*	5.1	3.9	1	28
329	URETHRAL STRICTURE AGE >17 W/O CC	0.9328	3.9	3.0	1	26
330	URETHRAL STRICTURE AGE 0-17	0.2788*	0.0	1.6	1	9
331	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	1.1772	6.7	4.5	1	28
332	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	0.6556	3.9	2.8	1	26
333	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	0.5482	3.9	2.9	1	26
334	MAJOR MALE PELVIC PROCEDURES W CC	2.3274	10.4	9.4	2	33
335	MAJOR MALE PELVIC PROCEDURES W/O CC	1.9043	8.5	8.1	2	22
336	TRANSURETHRAL PROSTATECTOMY W CC	1.0447	5.1	4.6	1	18
337	TRANSURETHRAL PROSTATECTOMY W/O CC	0.7646	4.0	3.7	1	12
338	TESTES PROCEDURES, FOR MALIGNANCY	0.9438	4.7	3.1	1	27
339	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	0.5433	2.0	1.6	1	10
340	TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	0.4157	1.5	1.3	1	4
341	PENIS PROCEDURES	1.0106	4.1	3.1	1	27
342	CIRCUMCISION AGE >17	0.4508*	2.9	2.1	1	20
343	CIRCUMCISION AGE 0-17	0.3788*	0.0	1.7	1	6
344	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.2011	5.8	4.1	1	28
345	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY	0.9157	4.8	3.3	1	27
346	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	1.2654	8.9	5.9	1	29
347	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	0.6387	4.1	2.3	1	26
348	BENIGN PROSTATIC HYPERTROPHY W CC	0.6474	3.1	2.7	1	14



## CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
349	BENIGN PROSTATIC HYPERTROPHY W/O CC	0.5763	2.5	2.0	1	13
350	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	0.6341	4.0	3.3	1	22
351	STERILIZATION, MALE	0.3333*	0.0	1.3	1	5
352	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	0.3204	2.0	1.6	1	10
353	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	2.0619	9.6	8.9	2	27
354	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC	1.4248	6.9	6.4	1	20
355	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC	0.9596	5.1	4.8	1	14
356	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	0.8778	4.9	4.5	1	17
357	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	1.8065	8.5	7.6	1	30
358	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	1.2243	5.9	5.4	1	17
359	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	0.9322	4.7	4.4	1	11
360	VAGINA, CERVIX & VULVA PROCEDURES	0.6164	2.8	2.1	1	19
361	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	0.7058	3.0	2.3	1	20
362	ENDOSCOPIC TUBAL INTERRUPTION	0.3874	1.4	1.3	1	4
363	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	0.6745	3.3	2.6	1	18
364	D&C, CONIZATION EXCEPT FOR MALIGNANCY	0.4521	1.8	1.5	1	8
365	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.2856	6.5	5.2	1	29
366	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	1.3112	8.2	5.1	1	29
367	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	0.6218	3.2	2.4	1	21
368	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	0.6294	4.0	3.5	1	17
369	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	0.4622	2.8	2.3	1	16
370	CESAREAN SECTION W CC	0.9573	5.5	5.0	1	16
371	CESAREAN SECTION W/O CC	0.7653	4.4	4.2	1	9
372	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	0.5868	3.5	3.0	1	15
373	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	0.3890	2.4	2.2	1	7
374	VAGINAL DELIVERY W STERILIZATION &/OR D&C	0.6202	2.7	2.6	1	7
375	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	0.8026	3.8	3.4	1	15
376	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	0.4767	3.0	2.5	1	15
377	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	0.6844	2.9	2.2	1	19



## CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
378	ECTOPIC PREGNANCY	0.7900	3.6	3.3	1	11
379	THREATENED ABORTION	0.3205	2.6	1.9	1	16
380	ABORTION W/O D&C	0.2918	1.6	1.4	1	5
381	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	0.3770	1.3	1.2	1	4
382	FALSE LABOR	0.1510	1.3	1.2	1	3
383	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	0.3525	3.2	2.6	1	18
384	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	0.3290	2.7	1.9	1	18
385	NEOMATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	-	-	-	-	-
386	EXTREME IMMATUREITY OR RESPIRATORY DISTRESS SYNDROME, NEOMATE	-	-	-	-	-
387	PREMATURITY W MAJOR PROBLEMS	-	-	-	-	-
388	PREMATURITY W/O MAJOR PROBLEMS	-	-	-	-	-
389	FULL TERM NEOMATE W MAJOR PROBLEMS	-	-	-	-	-
390	NEOMATE W OTHER SIGNIFICANT PROBLEMS	-	-	-	-	-
391	NORMAL NEWBORN	-	-	-	-	-
392	SPLENECTOMY AGE >17	0.1260	2.5	2.3	1	8
393	SPLENECTOMY AGE 0-17	3.3608	10.8	8.6	1	32
394	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS	1.8887	8.3	6.5	1	30
395	RED BLOOD CELL DISORDERS AGE >17	0.8992	4.6	2.7	1	26
396	RED BLOOD CELL DISORDERS AGE 0-17	0.8911	5.8	4.1	1	28
397	COAGULATION DISORDERS	0.5805	4.3	3.4	1	27
398	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	0.7868	4.4	3.4	1	27
399	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	1.6930	9.0	7.0	1	30
400	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	0.8057	5.3	4.0	1	28
401	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	2.4706	10.6	7.8	1	31
402	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	3.3245	12.3	9.1	1	33
403	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.0319	4.8	3.5	1	27
404	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	2.2708	11.3	7.1	1	31
405	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	1.0173	5.3	3.8	1	27
406	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R. PROC W CC	1.4140	7.3	4.6	1	28
		3.4379	14.0	9.7	1	33



## CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
407	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC	1.7617	7.3	5.9	1	29
408	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC	1.0159	4.5	3.3	1	27
409	RADIOTHERAPY	0.8907	6.3	4.0	1	28
410	CHEMOTHERAPY	0.6344	2.9	2.3	1	16
411	HISTORY OF MALIGNANCY W/O ENDOSCOPY	0.4555	3.9	2.6	1	26
412	HISTORY OF MALIGNANCY W ENDOSCOPY	0.4319*	3.1	2.2	1	22
413	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC	1.8235	10.3	6.7	1	30
414	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	0.9272	6.1	3.9	1	27
415	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.1118	13.5	9.1	1	33
416	SEPTICEMIA AGE >17	2.0554	9.2	7.0	1	30
417	SEPTICEMIA AGE 0-17	0.7030	5.2	4.3	1	28
418	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	0.9336	6.3	5.1	1	29
419	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	0.9898	5.7	4.4	1	28
420	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	0.8489	5.2	4.3	1	28
421	VIRAL ILLNESS AGE >17	0.6091	4.0	3.3	1	21
422	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	0.3944	3.1	2.7	1	13
423	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.2390	7.0	4.6	1	28
424	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	2.1681	20.3	13.0	1	37
425	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION	0.6305	5.8	3.4	1	27
426	DEPRESSIVE NEUROSES	1.3160	10.9	6.9	1	30
427	NEUROSES EXCEPT DEPRESSIVE	1.1697	12.1	6.8	1	30
428	DISORDERS OF PERSONALITY & IMPULSE CONTROL	1.6647	14.0	8.4	1	32
429	ORGANIC DISTURBANCES & MENTAL RETARDATION	1.4711	11.7	7.5	1	31
430	PSYCHOSES	1.4643	13.6	9.4	1	33
431	CHILDHOOD MENTAL DISORDERS	2.7466	23.5	16.3	1	40
432	OTHER MENTAL DISORDER DIAGNOSES	2.2490	22.5	16.0	1	40
433	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	0.7802	9.5	6.2	1	30
434	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W CC	1.3447	11.9	7.5	1	31
435	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W/O CC					



## CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
436	ALC/DRUG DEPENDENCE W REHABILITATION THERAPY	1.8070	24.2	21.3	3	45
437	ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY	1.4470	21.5	17.6	1	41
438	NO LONGER VALID					
439	SKIN GRAFTS FOR INJURIES	2.3054	8.9	6.5	1	30
440	WOUND DEBRIDEMENTS FOR INJURIES	1.8700	8.9	5.6	1	29
441	HAND PROCEDURES FOR INJURIES	0.7800	2.6	2.0	1	15
442	OTHER O.R. PROCEDURES FOR INJURIES W CC	2.7865	11.0	6.7	1	30
443	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	1.2434	5.3	3.1	1	27
444	MULTIPLE TRAUMA AGE >17 W CC	0.7886	3.9	3.2	1	25
445	MULTIPLE TRAUMA AGE >17 W/O CC	0.6648	4.1	2.8	1	26
446	MULTIPLE TRAUMA AGE 0-17	0.5024	3.2	2.2	1	23
447	ALLERGIC REACTIONS AGE >17	0.4398	2.2	1.8	1	10
448	ALLERGIC REACTIONS AGE 0-17	0.3995	2.1	1.8	1	9
449	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	0.8738	4.4	2.8	1	26
450	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	0.5016	2.8	1.9	1	18
451	POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	0.3452	2.1	1.6	1	10
452	COMPLICATIONS OF TREATMENT W CC	1.2139	6.4	4.1	1	28
453	COMPLICATIONS OF TREATMENT W/O CC	0.5103	3.4	2.4	1	26
454	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC	1.9011	5.6	2.9	1	26
455	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC	0.3824	2.2	1.7	1	12
456	BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	0.5713	4.7	3.7	1	27
457	EXTENSIVE BURNS W/O O.R. PROCEDURE	2.5594*	8.3	3.6	1	28
458	NON-EXTENSIVE BURNS W SKIN GRAFT	3.5707	16.3	12.2	1	36
459	NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROC	1.8076	11.3	7.1	1	31
460	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	0.9225	6.2	3.8	1	27
461	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	0.8749	4.1	2.5	1	26
462	REHABILITATION	2.5561	25.0	21.2	2	45
463	SIGNS & SYMPTOMS W CC	0.8551	7.0	4.7	1	28
464	SIGNS & SYMPTOMS W/O CC	0.6036	3.9	2.9	1	26



## CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
465	AFTERCARE W/ HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	0.3450*	2.5	1.9	1	14
466	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	0.5313	3.2	2.2	1	24
467	OTHER FACTORS INFLUENCING HEALTH STATUS	0.4055	3.0	2.0	1	21
468	UNRELATED OPERATING ROOM PROCEDURES	2.1569	8.5	5.1	1	29
469	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	-	-	-	-	-
470	UNGROUPABLE	-	-	-	-	-
471	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	5.0053	16.9	15.8	5	39
472	EXTENSIVE BURNS W O.R. PROCEDURE	12.3422*	33.6	19.1	1	43
473	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	4.9052	17.7	8.8	1	32
474	RESPIRATORY SYSTEM DIAGNOSIS WITH TRACHEOSTOMY	11.0155	25.2	20.0	2	43
475	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	3.5943	10.2	8.9	1	32
476	UNRELATED PROSTATIC OR PROCEDURE	1.9600	10.9	10.0	2	33
477	UNRELATED NON-EXTENSIVE OR PROCEDURE ONLY	0.9988	5.5	3.4	1	27
900	ALC/DRUG ABUSE OR DEP, DETOX, OTH W/O CC AGE 0-21	1.8144	22.2	13.7	1	37
901	ALC/DRUG ABUSE OR DEP, DETOX, OTH W/O CC AGE > 21	1.2235	13.8	8.6	1	32

Consistent with Medicare practice the weights have been normalized so that the average case weight in FY89 is equal to the average case weight in FY88



Table 2—National Urban and Rural Adjusted Standardized Amounts, Labor/Nonlabor, and Cost Share Per Diem.

Editorial note: This table will not appear in the Code of Federal Regulations.

**FY 89 CHAMPUS Adjusted Standardized Amounts**

National Large Urban adjusted standardized amount .....	\$2,890.20
Labor portion .....	\$2,134.12
Nonlabor portion .....	\$756.08
National Other Urban adjusted standardized amount .....	\$2,782.75
Labor portion .....	\$2,054.78
Nonlabor portion .....	\$727.97
National Rural adjusted standardized amount .....	\$2,568.42
Labor portion .....	\$2,011.33
Nonlabor portion .....	\$557.09
Cost-share per diem for beneficiaries other than dependents of active duty members .....	\$209.64

The adjusted standardized amounts are similar to those for FY 1988 in part because of the use of a lower cost-to-charge ratio which largely offsets the update factor.

[FR Doc. 88-19686 Filed 8-30-88; 8:45 am]  
BILLING CODE 3810-01-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[PP 8F3600/R975; FRL-3434-9]

**Pesticide Tolerances for Clopyralid**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes tolerances for residues of the herbicide clopyralid on the raw agricultural commodities (RACs) sugar beet roots and tops at 0.5 part per million (ppm). This regulation was requested by Dow Chemical U.S.A. and establishes the maximum permissible level for residues of the herbicide in or on these RACs.

**EFFECTIVE DATE:** August 31, 1988.

**ADDRESS:** Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-

767C), Office of Pesticide Programs, Environmental Protection Agency, Room 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-1830.

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the Federal Register of March 9, 1988 (53 FR 7569), which announced that Dow Chemical U.S.A., P.O. Box 1706, Midland, MI 48641-1706, proposed amending 40 CFR 180.431 by establishing a regulation to permit the residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on sugar beet roots and tops at 0.5 ppm.

No comments were received in response to the notice of filing.

A related document (FAP 8H5551/R976) establishing a regulation permitting residues of clopyralid in or on certain feed items appears elsewhere in this issue of the Federal Register.

The Agency has evaluated the data submitted in the petition and other relevant material. The data considered included:

1. Plant and animal metabolism studies.
2. A rat oral lethal dose (LD<sub>50</sub>) with an LD<sub>50</sub> of 4,300 milligrams/kilogram (mg/kg) of body weight.
3. A 13-week mouse feeding study with a no-observed-effect level (NOEL) of 750 mg/kg/day.
4. A 180-day dog feeding study with a NOEL greater than (<) 150 mg/kg/day. The highest dose treated (HDT).
5. A pilot rabbit teratology and a rabbit teratology study with a developmental NOEL < 250 mg/kg/day (HDT).
6. A rat teratology study with a developmental NOEL of 250 mg/kg/day (HDT) and a maternal toxicity NOEL of 75 mg/kg/day.
7. A two-generation rat reproduction study with a reproductive NOEL of < 1,500 mg/kg/day.
8. A 1-year dog feeding study with a NOEL of 100 mg/kg/day.
9. A 2-year rat chronic feeding/oncogenicity study with a NOEL of 50 mg/kg/day with no oncogenic potential observed under the conditions of the study at doses up to and including 150 mg/kg/day (HDT).
10. A repeat 2-year rat chronic feeding/oncogenicity study with a NOEL of 15 mg/kg/day with no oncogenic potential observed under conditions of the study up to 1,500 mg/kg/day (HDT).
11. A 2-year mouse oncogenicity study with no oncogenic potential observed under the conditions of the study up to and including 2,000 mg/kg/day (HDT).
12. A dominant lethal assay, negative.

13. *In vivo* rat cytogenic study, negative.

14. *In vitro* Salmonella and Saccharomyces assay, negative.

15. An *in vivo* mouse host-mediated assay, negative.

Based on a NOEL of 50 mg/kg/day in a 2-year chronic feeding/oncogenicity study in the rat and a hundredfold safety factor, the acceptable daily intake (ADI) has been set at 0.5 mg/kg/day. These tolerances, and those established elsewhere in this issue of the Federal Register, have a theoretical maximum residue contribution of 0.007882 mg/kg/day and would utilize 1.6 percent of the ADI.

There are no regulatory actions pending against the registration of clopyralid. The metabolism of clopyralid in plants and animals is adequately understood for purposes of the tolerances set forth below. An analytical method, gas chromatography, is available for enforcement purposes. Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the *Pesticide Analytical Manual*, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from:

William Grosse, Chief, Information Service Branch, Program Management and Support Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Room 223, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Established tolerances are adequate to cover residues that would result in meat, milk, poultry, and eggs. The Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the



requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

#### List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agriculture commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 12, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

#### PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.431 is amended by adding and alphabetically inserting the raw agricultural commodities sugar beet roots and sugar beet tops in the list of commodities, to read as follows:

#### § 180.431 Clopyralid; tolerances for residues.

Commodities	Parts per million
Sugar beet roots.....	0.5
Sugar beet tops.....	0.5

[FR Doc. 88-19297 Filed 8-30-88; 8:45 am]  
BILLING CODE 5560-50-M

#### 40 CFR Part 186

[FAP 8H5551 R976; FRL-3435-2]

#### Pesticide Tolerance For Clopyralid

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a regulation to permit the residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) calculated as parent in the feed commodity sugar beet

molasses at 7 parts per million (ppm). This regulation to establish a maximum permissible level for the herbicide in this commodity was requested by Dow Chemical U.S.A.

EFFECTIVE DATE: August 31, 1988.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Room 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1830.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of March 9, 1988 (53 FR 7569), which announced that Dow Chemical U.S.A., P.O. Box 1706, Midland, MI 48641-1706, had filed a feed additive petition (8H5551) proposing to amend 21 CFR 561.439 (feed commodity) by establishing a regulation to permit the residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on sugar beet molasses at 7.0 parts per million.

In the Federal Register of June 29, 1988 (53 FR 24666), EPA redesignated former 21 CFR Part 561 into new 40 CFR Part 186, and former 21 CFR 561.439 is now 40 CFR 186.1100.

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated and discussed in a related final rule document (PP 8F3600/R975) establishing tolerances in or on sugar beet roots and tops that appears elsewhere in this issue of the Federal Register.

The pesticide is considered useful for the purpose for which the regulation is sought. The nature of the residue is adequately understood for the purpose of establishing the feed additive regulation. An adequate analytical method, gas chromatography, is available for enforcement purposes.

Because of the long lead-time from establishing this tolerance to publication of the enforcement methodology in the *Pesticide Analytical Manual*, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from:

William Grosse, Chief, Information Service Branch, Program Management and Support Division (TS-767C), Office of Pesticide Programs,

Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460  
Office location and telephone number:  
Room 223, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

It is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 751 (7 U.S.C. 136 *et seq.*)). Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the Federal Register, file written objections with the Hearing Clerk (address above). Such objections should be submitted in quintuplicate and specify the provisions of the regulations deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget (OMB) has exempted this regulation from OMB requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 601-612)), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950). (Sec. 408(c), 72 Stat. 1786 (21 U.S.C. 346(c)).

#### List of Subjects in 40 CFR Part 186

Feed additives, pesticides and pests.

Dated: August 12, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

#### PART 186—[AMENDED]

1. Part 186 is amended as follows:  
a. The authority citation for Part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.1100 by adding and alphabetically inserting in the list of commodities the following entry to read as follows:



## § 186.1100 Clopyralid.

Commodity	Parts per million
Sugar beet molasses.....	7.0

[FR Doc. 88-19298 Filed 8-30-88; 8:45 am]

BILLING CODE 6560-50-M

## 40 CFR Part 228

[FRL-3436-4]

## Ocean Dumping; Designation of Sites

**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** EPA today designates a dredged material disposal site located in the Gulf of Mexico offshore of Port Aransas, Texas for the disposal of dredged material removed from the U.S. Navy Homeport project at Corpus Christi/Ingleside, Texas. This action is to designate the most environmentally acceptable and economically feasible area for ocean disposal of construction and future maintenance material from the proposed Homeport project.

**DATE:** This designation shall become effective September 30, 1988.

**ADDRESSES:** The file supporting this designation is available for public inspection at the following location: U.S. EPA Region VI (E-F), 1445 Ross Avenue, 10th floor, Dallas, Texas 75202-2733.

**FOR FURTHER INFORMATION CONTACT:** Norm Thomas, 214/655-2260.

**SUPPLEMENTARY INFORMATION:****A. Background**

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, Section 228.4) state that ocean dumping sites will be designated by publication in Part 228. This site designation is being published as the Final Rule in accordance with § 228.4(e) of the Ocean

Dumping Regulations regarding the designation of an ocean dredged material disposal site (ODMDS).

**B. EIS Development**

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA's Ocean Dumping Program, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations (39 FR 16186; May 7, 1974).

EPA has prepared a Draft Environmental Impact Statement entitled "Environmental Impact Statement (EIS) Ocean Dredged Material Disposal Site Designation U.S. Navy Gulf Coast Strategic Homeporting Corpus Christi/Ingleside, Texas." On December 4, 1987, a notice of availability of the Draft EIS for agency and public review was published in the *Federal Register*. The comment period on this Draft EIS closed on January 18, 1988. The Agency received ten comment letters on the Draft EIS and responded to them in the Final EIS. Editorial or factual corrections required by the comments were incorporated in the text and noted in the Agency's response. Comments, other than errata or minor changes, were addressed point by point in the Final EIS. On July 1, 1988, a notice of availability of the Final EIS for public review and comment was published in the *Federal Register*. The public comment period on the Final EIS closed on August 1, 1988. One letter on the Final EIS was received from the U.S. Department of Health and Human Services documenting the Final EIS adequately considered their comments made on the Draft EIS. The Final EIS is available for public inspection at the address given above.

The action discussed in the EIS is the designation of an ocean site for disposal of dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis, as part of the process of issuing permits for ocean disposal, in accordance with the Act, the Ocean Dumping Regulations, and other applicable Federal laws.

The EIS discussed the need for and alternatives to the proposed action. These included the eleven alternatives considered by the U.S. Navy in a previously published EIS (i.e., United States Navy Gulf Coast Strategic

Homeporting Final Environmental Impact Statement, January 1987). Five ocean disposal alternatives were also evaluated. These included a mid-shelf site, a continental slope site and three near-shore sites, including the Galveston District Corps of Engineers (COE) interim ODMDS. Both the mid-shelf and continental slope sites involve increased transportation costs at no environmental advantage. Because of the increased economic costs and lack of environmental benefit, the mid-shelf and continental slope sites were eliminated from consideration. In addition to ocean disposal, upland disposal, beach nourishment, as well as shallow, deep, and confined bay disposal were considered. The use of any single alternative for disposal of all material was not feasible and sufficient upland sites were not available to accommodate both: (1) The virgin and maintenance from the Homeport Project; and (2) the Corps routine maintenance material. The Navy's preferred alternative is a combination of upland disposal and ocean disposal for the 20.8 million cubic yards (mcy) of construction and future maintenance material. Of this total amount, 15.5 mcy will be disposed of inshore, and 5.3 mcy will be disposed of offshore.

EPA coordinated with the National Marine Fisheries Service (NMFS) in accordance with the requirements of section 7 of the Endangered Species Act. EPA determined that no adverse impacts will occur to listed endangered or threatened species as a result of site designation, and the NMFS concurred with this determination.

On December 28, 1987, EPA proposed designation of the Homeport ODMDS for disposal of 5.3 mcy of dredged material. The public comment period on this proposed rule closed on February 11, 1988. No comments were received on the proposed rule. This final rulemaking notice serves the same purpose as a Record of Decision required under regulations promulgated by the Council on Environmental Quality for federal agencies subject to NEPA.

**C. Site Designation**

The disposal site is located approximately four miles offshore of Port Aransas, Texas. Water depths within the area range from 47-55 feet. The coordinates of the site are as follows: 27°47'42" N., 97°00'12" W., 27°47'15" N., 96°59'25" W., 27°46'17" N., 97°01'12" W., 27°45'49" N., 97°00'25" W.

**D. Regulatory Requirements**

Five general and eleven specific criteria are used in the evaluation and



approval of ocean disposal sites. The general and specific criteria are given in §§ 228.5 and 288.6, respectively, of the EPA Ocean Dumping Regulations. General criteria considerations include minimizing interference with other marine activities, keeping any temporary perturbations from the dumping from causing impacts outside the disposal site, and allowing effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If EPA determines that disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels.

EPA has determined, based on the information and analysis presented in the Draft and Final EISs, that the Homeport ODMDS is acceptable under the five general criteria. The characteristics of the site are reviewed below in terms of the eleven specific criteria.

1. *Geographical position, depth of water, bottom topography and distance from coast.* (40 CFR 228.6(a)(1).)

The geographical position, (i.e., coordinates) of the disposal site is given above. The water depth ranges from 47 to 55 feet, the bottom topography is flat, and the site is approximately 3.7 miles from the coast at its closest point.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* (40 CFR 228.6(a)(2).)

The Corpus Christi Ship Channel (CCSC) serves as a migratory route for white shrimp, brown shrimp, blue crab, drum, sheepshead and southern flounder. This area, including a 1.5 mile buffer zone, is excluded as a migratory passage.

3. *Location in relation to beaches and other amenity areas.* (40 CFR 228.6(a)(3).)

The site is approximately 3.7 miles offshore of Mustang and San Jose Islands. Other local amenities include Mustang Island State Park, Caldwell Pier, and the Padre Island Natural Seashore, approximately 20 miles away.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the wastes, if any.* (40 CFR 228.6(a)(4).)

Virgin construction and maintenance materials (totaling approximately 5.3 mcy) from the Homeport Project would be disposed of at the preferred ODMDS. Roughly 2.4 mcy of construction material is proposed for disposal in the two-year or less construction interval.

Approximately 2.9 mcy of maintenance material is proposed for disposal through project year 50 (estimated at 290,000 cubic yards during every five-year maintenance cycle). Based on chemical analyses and biological toxicity studies of past maintenance material and virgin material from near the Homeport Project area, there are no pollution or toxicological problems associated with these sediments.

5. *Feasibility of surveillance and monitoring.* (40 CFR 228.6(a)(5).)

The site is amenable to surveillance and monitoring. The proposed monitoring and surveillance program for virgin material consists of ship-riding surveillance for disposal site location; bathymetric surveys; grain size analysis; sediment chemical characterizing; and benthic infaunal analysis at selected stations. For future maintenance material, the proposed program consist of water, sediment and elutriate chemistry; bioassays; bioaccumulation studies; and benthic infaunal analyses.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* (40 CFR 228.6(a)(6).)

Predominant longshore current, and thus predominant longshore transport, is to the southwest. Long-term mounding has not historically occurred with discharged maintenance material, although significant short-term mounding of construction material is possible. Steady longshore transport and occasional storms, including hurricanes, are expected, on a long-term basis, to remove the disposed material from the site.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* (40 CFR 228.6(a)(7).)

The discussion of the results of chemical and bioassay testing of past maintenance material and material from the near the interim-designated ODMDS plus chemical analyses of water from the area concluded that there were no indications of water or sediment quality problems in the Zone of Siting Feasibility (ZSF). Testing of past maintenance material from the CCSC in Corpus Christi Bay and virgin sediment from the area indicates that it was, or would be, acceptable for ocean disposal under 40 CFR Part 227. Studies of the benthos at the interim-designated ODMDS and nearby areas, however, have indicated that the composition of the benthos at the interim-designated ODMDS is significantly different from that in nearby "natural bottom" areas, due primarily to the fact that the substrate at the ODMDS is almost pure

sand versus the mixed grain size of the "natural bottom". Since the grain-size composition of the proposed material, both virgin and maintenance, indicates a high percentage of fines, the site, was not located near shore, in the sand province, but further offshore in the sand/silt/clay province.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, area of special scientific importance and other legitimate uses of the ocean.* (40 CFR 228.6(a)(8).)

Shipping, mineral extraction, commercial and recreational fishing, recreational areas and historic sites were considered in the siting feasibility process. As a result, the preferred site will not interfere with these or other legitimate uses of the ocean.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* (40 CFR 228.6(a)(9).)

Chemical studies conducted for or by the COE have shown only short-term water-column perturbations of turbidity, and perhaps Chemical Oxygen Demand (COD) resulted from disposal operations. No short-term sediment quality perturbation, except grain size, could be directly related to disposal operations. In general, the water and sediment quality is good throughout the ZSF. This indicates that there have been no long-term adverse impacts on water and sediment quality from past maintenance material disposal. The disposal material has sediment composition similar to the site and therefore no long-term benthic impacts are likely.

10. *Potentiality for the development of recruitment or nuisance species in the disposal site.* (40 CFR 228.6(a)(10).)

With a disturbance to any benthic community, initial recolonization will be by opportunistic species. The benthos at the interim-designated site is different, because of grain size influences, from the surrounding "natural bottom" areas. Nevertheless, the disposal of dredged material in the past has not, and disposal of the proposed material should not, attract or promote the development or recruitment of nuisance species.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* (40 CFR 228.6(a)(11).)

The location and types of areas and features of historical importance were considered and these areas are excluded. The nearest site of historical importance is located near the Port Aransas, Texas jetties, which are over two miles from the preferred site



boundary. Therefore, use of the preferred site would not impact any known sites of historical importance. As a part of the NEPA/EIS process, EPA coordinated with the Texas Historical Commission regarding cultural/historic resources.

#### E. Action

Based on the completed EIS process and available data, EPA concludes that the U.S. Navy's preferred alternative site may be appropriately designated for disposal of dredged material from the Homeport Project. The site is compatible with the general criteria and specific criteria used for site evaluation.

Before ocean dumping of dredged material at the site may occur, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping.

#### F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore, subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of \$100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

#### List of Subjects in 40 CFR Part 228.

Water pollution control.

Dated: August 18, 1988.

Robert E. Layton, Jr.,

Regional Administrator of Region VI.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended as set forth below.

#### PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by adding paragraph (b)(70) to read as follows:

#### § 228.12 Delegation of management authority for ocean dumping sites.

(b) \* \* \*

(70) Homeport Project Dredged Material Site—Region VI. Location: 27°47'42" N., 97°00'12" W., 27°47'15" N., 96°59'25" W., 27°46'17" N., 97°01'12" W., 27°45'49" N., 97°00'25" W.

Size: 1.4 square miles.

Depth: Ranges from 45–55 feet.

Primary Use: Dredged material.

Period of Use: 50 years.

Restriction: Disposal shall be limited to dredged material from the U.S. Navy Homeport Project, Corpus Christi/Ingle side, Texas.

#### § 228.12 [Amended]

3. Section 228.12 is amended by redesignating paragraphs (b)(48), (b)(49), and (b)(50) (Calcasieu River) as paragraphs (b)(51), (b)(52), and (b)(53).

[FR Doc. 88–19781 Filed 8–30–88; 8:45 am]

BILLING CODE 6560–50–M

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[MM Docket No. 87–471; RM–5920]

#### Radio Broadcasting Services; Lynnville, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** This document allots Channel 296A to Lynnville, Illinois as its first FM channel at the request of Illinois Bible Study Group. Coordinates for Channel 296A are 39–41–13 and 90–20–45. With this action, this proceeding is terminated.

**DATES:** Effective September 26, 1988; the window period for filing applications will open on September 27, 1988, and close on October 27, 1988.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 87–471, adopted July 14, 1988, and released August 12, 1988. The full text of this Commission decision is available for

inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

#### PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Lynnville, Illinois, Channel 296A.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–19608 Filed 8–30–88; 8:45 am]

BILLING CODE 6712–01–M

#### 47 CFR Part 73

[MM Docket No. 87–396; RM–5955]

#### Radio Broadcasting Services; Gregory, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** This document allots Channel 283A to Gregory, Texas, as that community's first local FM service, at the request of Gregory Associates. The channel can be allocated in compliance with § 73.207 of the Commission's Rules at reference coordinates 27–55–30 and 97–17–36. Concurrence by the Mexican government has been obtained. With this action, this proceeding is terminated.

**DATES:** Effective September 26, 1988; The window period for filing applications will open on September 27, 1988 and close on October 27, 1988.

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 87–396, adopted July 14, 1988, and released August 12, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased



from the Commission's copy contractors,  
International Transcription Service,  
(202) 857-3800, 2100 M Street NW, Suite  
140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73  
continues to read as follows:

Authority: 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM  
Allotments, is amended under Texas by  
adding Channel 283A, Gregory.

Steve Kaminer,

*Deputy Chief, Policy and Rules Division,  
Mass Media Bureau.*

[FR Doc. 88-19610 Filed 8-30-88; 8:45 am]

BILLING CODE 6712-01-M



# Proposed Rules

Federal Register

Vol. 53, No. 169

Wednesday, August 31, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 123

#### Disaster Loans

**AGENCY:** Small Business Administration.  
**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would clarify the procedures which SBA would use to impose the statutory penalty on disaster loan recipients who misapply disaster loan funds. At present, the statutory penalty and SBA's procedures under the statute are not defined or explained. The rule would clarify for the public what would be considered by SBA to be a misapplication of disaster loan funds and would set forth the procedures which will be followed before the statutory penalty is imposed on a borrower.

**DATE:** Comments must be received on or before October 31, 1988.

**ADDRESS:** Written comments should be sent to the Deputy Associate Administrator for Disaster Assistance, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Bernard Kulik, Tel. (202) 653-6879.

**SUPPLEMENTARY INFORMATION:** The statute, reprinted below, imposes a liability equal to one-and-one half times the original principal amount of a disaster loan, on a borrower who wrongfully misapplies the proceeds of such loan. At present, the statute is reflected in 13 CFR 123.24(d) with respect to physical disaster loans, in § 123.41(g)(3) with respect to economic injury disaster loans. These references would be deleted, and a new section inserted. At present the terms employed by the statute are not defined, and the details of its use by SBA are not explained. The proposed new section would make clear that use of disaster loan proceeds contrary to the use schedule in the Loan Authorization and Agreement (hereafter "Agreement") will be deemed a misapplication of funds.

Non-use of loan proceeds for authorized purposes after a specified maximum period of time will also be deemed a misapplication; the proposed rule sets a maximum term of 60 days from the date of the disbursement check, unless otherwise approved by SBA in writing. Since disaster loan installments usually are disbursed as the borrower requires them, the 60-day leeway seems ample.

The proposed rule also defines "wrongful misapplication" as the willful use of proceeds contrary to the Agreement. These words are intended to exclude from the statutory term minor shifts within the use schedule of the Agreement such as the expenditure of a smaller sum on one item, and a larger sum on another item of the use schedule. In its discretion, SBA may give the borrower some leeway for the reallocation of funds if, for example, in the course of the repair work or the economic readjustment after the disaster, the borrower realizes that his or her needs differ somewhat from those anticipated at the time the Agreement was signed.

The rule would also define the statutory terms "one-and-one-half times the original amount of the loan" as one hundred and fifty percent of the total amounts disbursed up to the time that SBA notifies the borrower of the misapplication. The reason for this interpretation is found in the legislative history. Senate Report No. 92-1008 (August 1, 1972) explained that

"... the legislation provides that if the proceeds of the loan are misapplied, the borrower shall be liable to the Small Business Administration in an amount equal to 1½ times the amount of the loan."

This language precludes an interpretation that would add a penalty of 150% to the original liability.

The procedure proposed herein would offer the borrower the opportunity, upon notice from SBA by certified mail, to refute within a stated time period of at least thirty (30) days, or more if SBA permits, the allegation of misapplication, or in the alternative to show that such misapplication has been cured. Failure to submit such rebuttal or evidence within the allotted time would be deemed an admission of misapplication.

If such rebuttal or evidence is submitted, the manager (or deputy manager) of the SBA office named in the notice would determine, within 30 days of receipt, whether the answer dispels or

confirms the allegations of misapplication. If misapplication is determined, the authorized loan amount would be reduced to the aggregate amounts disbursed, and the case transferred to liquidation with a recommendation that the statutory penalty be imposed. If, on the contrary, the determination is that no misapplication has occurred or that it has been cured, the borrower would be promptly notified accordingly by certified mail.

#### Regulatory Impact

This proposed rule is not a major rule for purposes of E.O. 12291, because it adds no regulatory requirement to the existing rule, but merely clarifies the procedures used to implement an existing regulatory requirement. It cannot increase costs to consumers, individual industries, Federal and State government agencies or geographic regions, nor can it have an adverse effect on competition, employment, investment, productivity, innovation or the ability of U.S. based businesses to compete with foreign based businesses in domestic or export markets. For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this proposed rule will not, if promulgated in final form, have a significant economic impact on a substantial number of small entities, for the same reason as stated with respect to E.O. 12291. For purposes of the Paperwork Reduction Act, 42 U.S.C. Chapter 35, SBA certifies that the proposed rule, if adopted, would not impose any additional reporting or record-keeping requirements.

#### List of Subjects in 13 CFR Part 123

Disaster assistance; Loan programs/business—small business.

#### PART 123—[AMENDED]

Accordingly, Part 123 of 13 CFR is proposed to be amended as follows:

1. The authority citation for Part 123 continues to read as follows:

Authority: Secs. 5(b)(6); 7 (b), (c) and (f) of the Small Business Act, 15 U.S.C. 634(b)(6); 636 (b), (c) and (f); Pub. L. 98-270, Title III; Pub. L. 99-272, Sec. 18006.

2. The Table of contents of Part 123 would be amended by adding at the end of Subpart A—Conditions Applicable to



All Loans Under This Part, a new entry as follows:

Sec.

123.19 Misapplication of Loan Proceeds.

§ 123.24 [Amended]

3. a. Section 123.24(d) would be amended by removing the second sentence thereof and adding: "(See § 123.19)."

b. Section 123.41(g)(3) would be amended by removing the second sentence thereof and adding: "(See § 123.19)."

4. A new § 123.19 would be added to Subpart A of Part 123 to read as follows:

§ 123.19 Misapplication of loan proceeds.

(a) *Statute*. "Whoever wrongfully misapplies the proceeds of a loan obtained under this subsection (15 U.S.C. 636(b)) shall be civilly liable to the Administrator in an amount equal to one-and-one-half times the original principal amount of the loan." Pub. L. 92-385, approved August 16, 1972; 86 Stat. 554.

(b) *Terms defined*. For purposes of this section:

(1) "Wrongful misapplication" means the willful use, without SBA approval, of any part or all of the loan proceeds contrary to the Loan Authorization and Agreement (hereafter "misapplication"). Non-use for authorized purposes of disbursed loan funds after a reasonable time not to exceed sixty (60) days from the date of the disbursement check, unless otherwise approved by SBA in writing, shall be deemed such misapplication.

(2) "Original principal amount" means the aggregate amount disbursed by SBA under such Agreement.

(3) "One-and-one-half times" means the original principal amount (together with accrued interest) plus one-half of such original principal amount.

(c) *Procedure*. (1) The SBA officer servicing the loan shall notify the borrower at the borrower's last known address by certified mail, return receipt requested, of the evidence in SBA's possession (including information supplied by the borrower) which indicates misapplication under this section.

(2) Such notice shall offer the borrower an opportunity to submit to the SBA office indicated in the notice, within a stated time limit of at least 30 days from the date of such notice, in person or in writing, *pro se* or otherwise, whatever evidence borrower wishes to offer that the misapplication has been cured, or, in the alternative, to rebut the allegation contained in the notice.

Failure or refusal to submit such evidence or rebuttal within the stated time limit (or any extension thereof, for good cause shown, in SBA's discretion) shall be deemed an admission of such misapplication. If such evidence or rebuttal is submitted, the director or manager of the SBA office indicated in the notice, or his or her deputy, shall determine within thirty days of receipt of the borrower's answer, whether or not a misapplication has occurred.

(3) If such determination is that a misapplication has occurred, the approved loan amount shall be reduced to the original principal amount, the borrower notified accordingly by certified mail, return receipt requested, and the case referred for liquidation with the recommendation that the statutory penalty be imposed.

(4) If the determination under paragraph (c)(2) of this section is that no misapplication has occurred, the borrower shall be promptly notified accordingly, by certified mail, return receipt requested.

(Catalog of Federal Domestic Assistance Nos. 59002 Economic Injury Loans; 59008 Physical Disaster Loans.)

Date: August 4, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-19692 Filed 8-30-88; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 88-NM-105-AD]

#### Airworthiness Directives; Airbus Industrie Model A310 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes a new airworthiness directive (AD), applicable to Airbus Industrie Model A310 series airplanes, which would require repetitive inspections of the rear passenger/crew door for cracks, and modification, if necessary. This proposal is prompted by reports of cracks found during routine inspection of an airplane of similar design. This condition, if not corrected, could lead to separation of the door from the airplane and subsequent rapid decompression.

**DATES:** Comments must be received no later than October 23, 1988.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-105-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

#### FOR FURTHER INFORMATION CONTACT:

Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

##### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-105-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

##### Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the



airworthiness authority of France, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition that exists on Airbus Model A310 series airplanes. There have been three reports of cracks found during routine inspections in the inner flange of door frame 73A in the area of the lower hinge arm attachment fitting on Airbus Model A300 airplanes. The Model A300 and Model A310 designs are similar with respect to this area. This condition, if not corrected, could lead to separation of the rear passenger/cargo door and subsequent rapid decompression.

Airbus Industrie has issued Service Bulletin A310-53-2043, dated August 3, 1987, which describes procedures for the inspection of the rear passenger/crew door; and Service Bulletin A310-53-2038, Revision 2, dated March 3, 1988, which describes procedures for modification of the door frame structure.

Accomplishment of the modification terminates the need for the repetitive inspections. The DGAC has classified both service bulletins as mandatory, and has issued French AD 88-061-083(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require repetitive inspections of the rear passenger/cargo door, and modification, if necessary, in accordance with the service bulletins described above.

It is estimated that 7 airplanes of U.S. registry would be affected by this AD, that it would take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be \$2,520.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order

12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane (\$360). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

#### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

#### PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

#### § 39.13 [Amended]

2. By adding the following new airworthiness directive:

**Airbus Industrie:** Applies to Model A310 series airplanes, as listed in Airbus Industrie Service Bulletin A310-53-2043, dated August 3, 1987, and Change Notice Number OA, dated October 15, 1987. Compliance required as indicated, unless previously accomplished.

To prevent separation of the rear passenger/crew door from the airplane and subsequent rapid decompression, accomplish the following:

A. Prior to the accumulation of 8,000 landings or within the next 1,000 landings after the effective date of this AD, whichever occurs later, inspect frame 73A RH and LH between beams 5 and 7 in accordance with Airbus Industrie Service Bulletin A310-53-2043, dated August 3, 1987.

1. If cracks are detected that are less than 0.4 inch, modify the frame within the next 2,500 landings, in accordance with Airbus Industrie Service Bulletin A310-53-2038, Revision 2, dated March 3, 1988. The inspection must be repeated at intervals not to exceed 1,250 landings until the modification is accomplished.

2. If cracks are detected that are equal to or more than 0.4 inch but less than 0.8 inch, modify the frame within the next 1,500 landings, in accordance with Airbus Industrie Service Bulletin A310-53-2038, Revision 2, dated March 3, 1988. The inspection must be repeated at intervals not to exceed 750

landings until the modification is accomplished.

3. If cracks are detected that are equal to or more than 0.8 inch, prior to further flight, modify the frame in accordance with Airbus Industrie Service Bulletin A310-53-2038, Revision 2, dated March 3, 1988.

4. If no cracks are detected, repeat the inspection at intervals not to exceed 4,000 landings.

B. The repetitive inspections required by paragraph A., above, may be terminated following completion of the modification of the door frame structure in accordance with Airbus Industrie Service Bulletin A310-53-2038, Revision 2, dated March 3, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Washington, DC, on August 22, 1988.

Thomas E. McSweeney,

Acting Director, Office of Airworthiness.

[FR Doc. 88-19773 Filed 8-30-88; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 88-NM-104-AD]

#### Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Airbus Industrie Model A300 series airplanes, which would require repetitive inspections of the rear passenger/crew door for cracks, and



modification, if necessary. This proposal is prompted by reports of cracks found during routine inspection of this airplane. This condition, if not corrected, could lead to separation of the door from the airplane and subsequent rapid decompression.

**DATE:** Comments must be received no later than October 23, 1988.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-104-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

#### **SUPPLEMENTARY INFORMATION:** **Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

#### **Availability of NPRM**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-104-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

#### **Discussion**

The direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition that exists on Airbus Model A300 series airplanes. There have been three reports of cracks found during routine inspections in the inner flange of door frame 73A in the area of the lower hinge arm attachment fitting. This condition, if not corrected, could lead to separation of the rear passenger/crew door and subsequent rapid decompression.

Airbus Industrie has issued Service Bulletin A300-53-220, dated August 3, 1987, which describes procedures for the inspection of the rear passenger/crew door; and Service Bulletin A300-53-221, dated September 18, 1987, which describes procedures for modification of the door frame structure. Accomplishment of the modification terminates the need for the repetitive inspections. The DGAC has classified both service bulletins as mandatory, and has issued French AD 88-061-083(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require repetitive inspections of the rear passenger/cargo door, and modification, if necessary, in accordance with the service bulletins described above.

It is estimated that 53 airplanes of U.S. registry would be affected by this AD, that it would take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be \$19,080.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule

pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane (\$360). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

#### **List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

#### **The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

#### **PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

#### **§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**Airbus Industrie:** Applies to Model A300 series airplanes, as listed in Airbus Industrie Service Bulletin A300-53-220, dated August 3, 1987. Compliance required as indicated, unless previously accomplished.

To prevent separation of the rear passenger/crew door from the airplane and subsequent rapid decompression, accomplish the following:

A. Prior to the accumulation of 8,000 landings or within the next 1,000 landings after the effective date of this AD, whichever occurs later, inspect frame 73A RH and LH between beams 5 and 7 in accordance with Airbus Industrie Service Bulletin A300-53-200, dated August 3, 1987.

1. If cracks are detected that are less than 0.4 inch, modify the frame within the next 2,500 landings, in accordance with Airbus Industrie Service Bulletin A300-53-221, dated September 18, 1987, and Change Notice No. 0A, dated January 4, 1988. The inspection must be repeated at intervals not to exceed 1,250 landings until the modification is accomplished.

2. If cracks are detected that are equal to or more than 0.4 inch but less than 0.8 inch, modify the frame within the next 1,500 landings, in accordance with Airbus Industrie Service Bulletin A300-53-221, dated September 18, 1987, and Change Notice No. 0A, dated January 4, 1988. The inspection must be repeated at intervals not to exceed 750 landings until the modification is accomplished.

3. If cracks are detected that are equal to or more than 0.8 inch, prior to further flight,



modify the frame in accordance with Airbus Industrie Service Bulletin A300-53-221, dated September 18, 1987, and Change Notice No. 0A, dated January 4, 1988.

4. If no cracks are detected, repeat the inspection at intervals not to exceed 4,000 landings.

B. The repetitive inspections required by paragraph A., above, may be terminated following completion of the modification of the door frame structure, in accordance with Airbus Industrie Service Bulletin A300-53-221, dated September 18, 1987.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Washington, DC, on August 22, 1988.

Thomas E. McSweeney,

Acting Director, Office of Airworthiness.

[FR Doc. 88-19774 Filed 8-30-88; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 88-NM-106-AD]

#### Airworthiness Directives; Airbus Industrie Model A300-600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Airbus Industrie Model A300-600 series airplanes, which would require repetitive inspections of the rear passenger/crew door for cracks, and modification, if necessary. This proposal is prompted by reports of cracks found

during routine inspection of an airplane of similar design. This condition, if not corrected, could lead to separation of the door from the airplane and subsequent rapid decompression.

DATES: Comments must be received no later than October 23, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-106-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

#### FOR FURTHER INFORMATION CONTACT:

Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-Public contact concerned with the substance of this proposal will be filed in the Rules Docket.

##### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-106-AD, 17900

Pacific Highway South, C-68966, Seattle, Washington 98168.

#### Discussion

The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition that exists on Airbus Model A300-600 series airplanes. There have been three reports of cracks being found on routine inspection in the inner flange of door frame 73A in the area of the lower hinge arm attachment fitting on Airbus Model A300 series airplanes. The Models A300 and A300-600 are similar with respect to this area. This condition, if not corrected, could lead to separation of the rear passenger door and subsequent rapid decompression.

Airbus Industrie has issued Service Bulletin A300-53-6024, dated August 3, 1987, which describes procedures for the inspection of the rear passenger/crew door; and Service Bulletin A300-53-6019, dated September 18, 1987, which describes procedures for modification of the door frame structure.

Accomplishment of the modification terminates the need for the repetitive inspections. The DGAC has classified both service bulletins as mandatory, and has issued French AD 88-061-083(B) addressing this subject.

The airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require repetitive inspections of the rear passenger/cargo door, and modification, if necessary, in accordance with the service bulletins described above.

It is estimated that 3 airplanes of U.S. registry would be affected by this AD, that it would take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be \$1,080.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have



federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane (\$360). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

#### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

#### PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

#### § 39.13 [Amended]

2. By adding the following new airworthiness directive:

**Airbus Industrie:** Applies to Model A300-800 series airplanes, as listed in Airbus Industrie Service Bulletin A300-53-6024, dated August 3, 1987, and Change Notice Number OA, dated October 15, 1987, Compliance required as indicated, unless previously accomplished.

To prevent separation of the rear passenger/crew door from the airplane and subsequent rapid decompression, accomplish the following:

A. Prior to the accumulation of 8,000 landings or within the next 1,000 landings after the effective date of this AD, whichever occurs later, inspect frame 73A RH and LH between beams 5 and 7 in accordance with Airbus Industrie Service Bulletin A300-53-6024, dated August 3, 1987, and Change Notice Number OA, dated October 15, 1987.

1. If cracks are detected that are less than 0.4 inch, modify the frame within the next 2,500 landings, in accordance with Airbus Industrie Service Bulletin A300-53-6019,

Revision 1, dated October 20, 1987, and Change Notice No. 1C, dated February 16, 1988. The inspection must be repeated at intervals not to exceed 1,250 landings until the modification is accomplished.

2. If cracks are detected that are equal to or more than 0.4 inch but less than 0.8 inch, modify the frame within the next 1,500 landings, in accordance with Airbus Industrie Service Bulletin A300-53-6019, Revision 1, dated October 20, 1987, and Change Notice No. 1C, dated February 16, 1988. The inspection must be repeated at intervals not to exceed 750 landings until the modification is accomplished.

3. If cracks are detected that are equal to or more than 0.8 inch, prior to further flight, modify the frame in accordance with Airbus Industrie Service Bulletin A300-53-6019, Revision 1, dated October 20, 1987, and Change Notice No. 1C, dated February 16, 1988.

4. If no cracks are detected, repeat the inspection at intervals not to exceed 4,000 landings.

B. The repetitive inspections required by paragraph A., above, may be terminated following completion of the modification of the door frame structure in accordance with Airbus Service Bulletin A300-53-6019, Revision 1, dated October 20, 1987.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Washington, DC, on August 22, 1988.

Thomas E. McSweeney,

Acting Director, Office of Airworthiness.

[FR Doc. 88-19775 Filed 8-30-88; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 88-NM-112-AD]

#### Airworthiness Directives; Gulfstream Aerospace Model G-IV Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes to revise an existing airworthiness directive (AD), applicable to Gulfstream Model G-IV series airplanes, which currently requires discontinuing all autopilot/flight director instrument landing system (ILS) operations, and disabling of the approach mode in the autopilot/flight director. This proposal would add an optional modification which, if installed, would remove the restrictions on use of the autopilot/flight director established by the existing AD, and reestablish normal ILS operations. This proposal would also limit the applicability of the AD to airplanes, Serial Numbers 1000 through 1059 only. This proposal is prompted by recent modifications to the design of the Sperry/Honeywell SPZ-8000 flight guidance computer (FGC), which have corrected the deficiencies addressed in the existing AD.

**DATES:** Comments must be received no later than October 23, 1988.

**ADDRESSES:** Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-112-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Savannah, Georgia 31402-2206. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia.

**FOR FURTHER INFORMATION CONTACT:** Mr. James H. Williams, Aerospace Engineer, Atlanta Aircraft Certification Office, Systems and Equipment Branch, ACE-130A, FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349; telephone (404) 991-3020.



#### SUPPLEMENTARY INFORMATION: Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

#### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-112-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

#### Discussion

On January 15, 1988, the FAA issued AD 88-02-01, Amendment 39-5849 (53 FR 3737; February 9, 1988), applicable to certain Gulfstream Model G-IV series airplanes, to require the discontinuance of all autopilot/flight director ILS operations, and the disabling of the approach mode in the autopilot/flight director. That action was prompted by reports of a software design problem identified in the Sperry/Honeywell SPZ-8000 FGC, which can result in unannounced, hazardously misleading flight director and autopilot commands during ILS operations.

Since issuance of that AD, Sperry/Honeywell has conducted an indepth review of the FGC software and has designed a modification which corrects the previous problem. Simulator testing and flight testing have been conducted to verify and validate the new software configuration. The FAA has participated in this testing and has determined that, with this modified software installed, the conditions which warranted the original AD are eliminated.

The FAA has reviewed and approved Gulfstream Aircraft Service Change (ASC) #53A, dated May 12, 1988, which describes procedures for installation of

the modified Sperry/Honeywell SPZ-8000 FGC, and restoration of the airplane to fully operational configuration.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would revise AD 88-02-01 to provide for an optional terminating action for the requirements of that AD by installing the modification of the FGC in accordance with the service bulletin previously mentioned. Once this modification is installed, normal autopilot/flight director ILS operations may be resumed.

Additionally, this proposal would limit the applicability of the existing AD to only those airplanes with Serial Numbers 1000 through 1059. Beginning with Serial Number 1060, a modification to the FGC software was made in production, which eliminates the unsafe condition addressed in this AD action.

It is estimated that 50 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Modification kits would be provided by the manufacturer at no charge. Based on these figures, the total cost of impact of the AD on U.S. operators is estimated to be \$9,600.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Gulfstream Model G-IV series airplanes are operated by small entities. A copy of draft regulatory evaluation prepared for this action is contained in the regulatory docket.

#### List of Subjects in 14 CFR Part 39 Aviation safety, Aircraft.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

#### PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

#### § 39.13 [Amended]

2. By revising AD 88-02-01, Amendment 39-5849 (53 FR 3737; February 9, 1988), by revising the applicability statement, redesignating existing paragraph E. as F., and adding a new paragraph E., as follows:

**Gulfstream Aerospace:** Applies to Model G-IV series airplanes, Serial Numbers 1000 through 1059, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the potential display and use of hazardously misleading information from the flight guidance computer (FGC) during an ILS approach, accomplish the following:

A. Prior to further flight, add the following to the limitations section of the airplane flight manual (AFM) and notify all crewmembers. This may be accomplished by inserting a copy of this AD in the AFM: "ILS approaches utilizing the flight director and/or autopilot are prohibited."

B. Prior to further flight, affix an appropriate placard(s) on the instrument panel in full view of both crewmembers stating: "FLIGHT DIRECTOR/COUPLED ILS APPROACHES PROHIBITED."

C. Prior to further flight, affix an appropriate placard to the Approach Mode Arm (APR) switch on the autopilot control panel stating: "USE PROHIBITED."

D. Within 15 days after the effective date of this AD, disable the approach mode in the autopilot/flight director in a manner approved by the Manager, Atlanta Aircraft Certification Office, FAA, Central Region.

E. Installation of the modification of the autopilot/radio altimeter in accordance with Gulfstream Aerospace Aircraft Service Change (ASC) #53A, dated May 12, 1988, constitutes terminating action for the requirements of paragraphs A. through D. above.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office, FAA, Central Region.

**Note:** The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.



All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Gulfstream Aerospace Corporation, P.O. Box 2206, Savannah, Georgia 31402-2206. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia.

Issued in Washington, DC, on August 22, 1988.

Thomas E. McSweeney,

Acting Director, Office of Airworthiness.

[FR Doc. 88-19772 Filed 8-30-88; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 87-CE-14-AD]

#### Airworthiness Directives; Piper Models PA-28 and PA-32 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This action proposes to rescind Airworthiness Directive (AD) 87-08-08 (Amendment 39-5615), which was suspended September 28, 1987, by AD 87-08-08R2 (Amendment 39-5731), applicable to certain Piper Models PA-28 and PA-32 series airplanes. The AD was issued following an in-flight wing failure on a Piper PA-28 airplane. Subsequent to its issuance, the FAA has, through an extensive evaluation of the fracture surfaces from other in-service airplanes, determined that an extraordinary stress level is required to produce the growth rate of these cracks and that the in-flight failure was an isolated occurrence. Therefore, such failure is not likely to exist or develop in other Piper Model airplanes of the same type design.

**DATES:** Comments must be received on or before October 31, 1988.

**ADDRESSES:** Information pertaining to this action may be obtained from or may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87-CE-14-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles L. Perry, Atlanta Aircraft Certification Office, ACE-120A, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-2910.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

##### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87-CE-14-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

##### Discussion

AD 87-08-08, Amendment 39-5615 (52 FR 15302, April 28, 1987), was issued to require on certain Piper Model PA-28 and PA-32 series airplanes (1) removal of both wings and a visual inspection with a ten-power magnifying glass and a dye-penetrant inspection of the lower spar cap for both wings; (2) replacement of any spars found to be cracked; and (3) visual inspection of the wing upper skin for cracks and repair as required. AD 87-08-08R1, Amendment 39-5669 (52 FR 29505, August 10, 1987), which was issued with an effective date of August 12, 1987, revised the AD to delete the Model PA-28-201T since it was verified that its spar design configuration was different in detail and should not have been affected. On September 28, 1987, the AD was suspended by AD 87-08-08R2 (Amendment 39-5731, 52 FR 35907) pending further evaluation, since it was

becoming apparent from the relevant data being collected that only those airplanes used in a severe operating environment were susceptible to fatigue cracks.

The original AD was issued following an in-flight wing separation of a Piper PA-28-161, S/N 8090115, on March 30, 1987, near Marlin, Texas. The airplane was flying low level pipeline patrol at the time of the accident. Investigation revealed that the left wing separated from the airplane at the lower spar wing root attachment to the fuselage. The National Transportation Safety Board, the FAA, and Piper Aircraft Corporation personnel determined that the lower cap on the main spar had sustained a fatigue failure. The lower cap had a fatigue crack across its forward face just outboard of the outboard attachment hole.

During the time that the unrevised AD was in effect, approximately 560 spar inspections were performed. These inspections resulted in three additional reports of spar cracks in two (2) PA-32-300 airplanes operated in Alaska. It was determined that these airplanes had been operated in a severe environment based on repairs recorded on the airplanes and their present general condition. The environment included rough rock/gravel fields and overweight operation. Prior to the accident which led to the issuance of the original AD, neither the FAA nor the Piper Service Department had received a report of problems in the area where the crack occurred. However, the FAA realized that the inspections required would necessitate the removal and reinstallation of high tolerance critical wing spar attachment bolts; and, that if this was not done carefully, could cause damage to the wing spar cap material that could in turn result in a future fatigue failure. There are airplanes in the fleet with 19,000 plus hours time-in-service (TIS) that complied with the inspections of the AD and reported no cracks found.

Fatigue tests were conducted on a full-scale test article in the late 1950's and early 1960's prior to certification of the PA-28. These tests were run to the equivalent of 300,000 unfactored cycles with no failure. The FAA has carefully reviewed all of the available information including a credible fracture mechanics analysis. Striation counts on the fracture surface of the spar cap removed from one airplane showed that it would require extraordinary stress levels to produce the growth rate found. Airplanes operated in a normal general aviation type environment would not be expected to be exposed to sufficient



loads to create these types of stress levels. Therefore it is concluded that the cracks found were isolated occurrences and those failures are not likely to exist or develop in other PA-28 series or PA-32 series airplanes operated in a normal manner.

In addition Piper has recently conducted an extensive fracture mechanics and fatigue analysis program to establish more accurately an inspection threshold and appropriate reinspection intervals based on different categories of airplane operations. Their study shows that airplanes used for low level pipeline patrol have a fatigue life approximately 20 times less than airplanes used for normal operations. Piper has issued Service Bulletin (SB) No. 886, dated June 8, 1988, addressing the spar damage that can occur from different types of operational usage and providing applicable inspection thresholds, intervals, and procedures for detecting damage. This SB will serve as the vehicle for alerting owners and operators of PA-28 series or PA-32 series airplanes used in operations that the continued airworthiness maintenance program must include an inspection of the wing spar/fuselage attachment. In addition to this SB, information will be provided in the appropriate Maintenance Manuals to fully ensure that pilots and mechanics are aware of the affect severe operational usage has on the structural durability of their airplane, and the need for repetitive inspections of the wing spar attachment area for cracks. The SB also specified an initial inspection threshold of 30,600 hours TIS for normal usage airplanes which was also based on the above mentioned study. Since the high time airplane in the fleet has only accumulated approximately 19,000 hours TIS and, furthermore, only a relatively few airplanes have accumulated more than 10,000 hours TIS, no action is deemed necessary at this time. The FAA will continue to track the service history of these high time airplanes and as the 30,600 hour TIS threshold is approached, appropriate regulatory action may be considered. Consequently, at this time the FAA proposes to rescind AD 87-08-08.

There are approximately 38,500 airplanes affected by the proposed action. Since Revision 2 of the AD suspended the effective date of the AD, the cost of complying with the proposed rescission is estimated to be negligible to the private sector.

The regulations set forth in this notice would be promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, et

seq.), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

#### PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

#### § 39.13 [Amended]

2. By rescinding AD 87-08-08, Amendment 39-5615; AD 87-08-08R1, Amendment 39-5669; and AD 87-08-08R2, Amendment 39-5731.

Issued in Washington, DC, on August 22, 1988.

Thomas E. McSweeney,

Acting Director, Office of Airworthiness.

[FR Doc. 88-19776 Filed 8-30-88; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 71

[Airspace Docket No. 88-AWP-15]

#### Proposed Removal of Transition Area, South Kauai, HI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to remove the transition area located at South Kauai, Hawaii. This instrument approach serving Port Allen Airport has been cancelled. No instrument operations are conducted at this airport. The intended effect of this proposal is to return that controlled airspace no longer required for instrument approaches to public use.

**DATES:** Comments must be received on or before October 24, 1988.

**ADDRESSES:** Send comments on the proposal in triplicate to: Daniel K. Martin, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, CA 90261.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California.

**FOR FURTHER INFORMATION CONTACT:** Daniel K. Martin, Airspace and Procedures Branch, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, Telephone (213) 297-1642.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments as self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AWP-15." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 15000 Aviation Blvd.



Lawndale, California, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration.

Federal Aviation Administration, Airspace and Procedures Branch, AWP-530, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

#### The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (145 CFR Part 71) to remove the transition area located at South Kauai, Hawaii. This proposed action is necessary based on the fact that the instrument approach procedure to the Port Allen Airport has been cancelled, negating the need for transition airspace. No instrument operations are conducted to or from this airport.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979; and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation

Administration proposed to amend Part 71 of the Federal Aviation Regulations (14 Part 71) as follows:

#### PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

#### § 71.181 [Amended]

2. Section 71.181 is amended as follows:

#### South Kauai, Hawaii [Removed]

Issued in Los Angeles, California on August 17, 1988.

Jacqueline L. Smith,  
Manager, Air Traffic Division.  
[FR Doc. 88-19777 Filed 8-30-88; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 71

[Airspace Docket No. 88-ASW-41]

#### Proposed Establishment of Transition Area; Ruidoso, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish a transition area at Ruidoso, NM. The development of a new standard instrument approach procedure (SIAP) to the Sierra Blanca Regional Airport, utilizing the new Capitan Nondirectional Radio Beacon (NDB), has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the new SIAP. If this proposal is adopted, the status of the airport would be changed from visual flight rules (VFR) to instrument flight rules (IFR).

**DATES:** Comments must be received on or before October 4, 1988.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 88-ASW-41, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation

Administration, 4400 Blue Mound Road, Fort Worth, TX.

#### FOR FURTHER INFORMATION CONTACT:

Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5581.

#### SUPPLEMENTARY INFORMATION:

#### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions in the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASW-41." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.



### The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by establishing a transition area at Ruidoso, NM. The development of a new SIAP to the Sierra Blanca Regional Airport, utilizing the new Capitan NDB, has necessitated this proposal. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing this new SIAP. Coincident with this proposal would be the changing of the status of the Sierra Blanca Regional Airport from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 1, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

### PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

### § 71.181 [Amended]

2. Section 71.181 is amended as follows:

### Ruidoso, NM [New]

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Sierra Blanca Regional Airport (latitude 33°27'42"N., longitude 105°31'31"W.).

Issued in Fort Worth, TX on August 15, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-19771 Filed 8-30-88; 8:45 am]

BILLING CODE 4910-13-M

### 14 CFR Part 71

### [Airspace Docket No. 88-ANM-18]

### Proposed Amendment, Denver Transition Area, Denver, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

**SUMMARY:** This notice proposes to amend the Denver, Colorado, 700 foot transition area. Additional controlled airspace is required to contain the missed approach segment of a new instrument landing procedure at the Denver Front Range Airport. The area will be depicted on aeronautical charts to provide reference for VFR pilot purposes.

**DATES:** Comments must be received on or before October 20, 1988.

**ADDRESSES:** Send comments on the proposal to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 88-ANM-18, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Office of Regional Counsel at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

### FOR FURTHER INFORMATION CONTACT:

Ted Melland, ANM-536, Federal Aviation Administration, Docket No. 88-ANM-18, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2536.

### SUPPLEMENTARY INFORMATION:

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters

wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ANM-18." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & System Management Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11-2 which describes the application procedure.

### The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide additional controlled airspace for instrument flight rules procedures at the Denver Front Range Airport. The airspace is intended to segregate aircraft operating in visual flight rules conditions from other aircraft operating in instrument flight rules conditions. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with instrument flight rules procedures.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory



Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

#### PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

#### § 71.181 [Amended]

2. Section 71.181 is amended as follows:

#### Denver, Colorado, [Amended]

On the third line and on the fifth line change 078" to read 065".

Issued in Seattle, Washington, on August 11, 1988.

F.E. Davis,

Assistant Manager, Air Traffic Division,  
Northwest Mountain Region.

[FR Doc. 88-19776 Filed 8-30-88; 8:45 am]

BILLING CODE 4910-13-M

#### DEPARTMENT OF LABOR

#### Mine Safety and Health Administration

#### 30 CFR Part 75

#### Automatic Emergency-Parking Brakes for Rubber-Tired, Self-Propelled Electric Face Equipment; Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed Rule; Extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's proposed rule for automatic

emergency-parking brakes for rubber-tired, self-propelled electric face equipment in 30 CFR Part 75.

DATES: Written comments on the proposed rule for automatic emergency-parking brakes must be received on or before September 30, 1988.

ADDRESS: Send comments to the Office of Standards, Regulations and Variances; MSHA; Room 631, Ballston Tower No. 3; 4015 Wilson Boulevard; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION: On March 1, 1988, MSHA published a proposed safety standard that would require automatic emergency-parking brakes on rubber-tired, self-propelled electric face equipment used in underground coal mines (53 FR 6512). The automatic emergency-parking brakes described in the proposal engage when there is a loss of power to such equipment, and could be activated by the equipment operator in an emergency situation. The brakes also act automatically as a parking brake when the equipment is intentionally deenergized. The standard was proposed under section 101 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 811).

On June 16, 1988, MSHA published in the Federal Register (53 FR 22502) a Notice of Public hearing which stated that the record would remain open until July 29, 1988 for the submission of post hearing comments. In response to requests from the mining community, MSHA extended the comment period to August 29, 1988 (53 FR 28673). Due to further requests, MSHA is extending the comment period to September 30, 1988. All interested parties are encouraged to submit comments prior to this date.

Date: August 25, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-19756 Filed 8-30-88; 8:45 am]

BILLING CODE 4510-43-M

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[FRL-3438-8]

#### New Mexico Regulations for Nonattainment Area Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes approval of a revision to the State of New Mexico Implementation Plan (SIP) to include Air Quality Control Regulation (AQCR) 709, Permits—Nonattainment Areas. This regulation was submitted to EPA on November 5, 1985, in order to satisfy the conditional approval of New Mexico's Part D SIP (45 FR 24509). The regulation establishes a program under which new and modified sources may be constructed in areas where a National Ambient Air Quality Standard (NAAQS) is being exceeded, without interfering with the continuing progress toward attainment of that standard.

DATES: Comments must be received on or before September 30, 1988.

ADDRESSES: Comments may be mailed to Mr. Thomas Diggs, at the EPA Region 6 Air Programs Branch (Address below). Copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-AN), 1445 Ross Avenue, Dallas, Texas 75202-2733.

New Mexico Environmental Improvement Division, Air Quality Bureau, 1190 St. Francis Dr., Santa Fe, New Mexico 87504-0968.

FOR FURTHER INFORMATION CONTACT: Bill Riddle, State Implementation Plan/New Source Review Section, Air Programs Branch (6T-AN), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 655-7214, FTS 255-7214, Reference docket file number SIP 1-3-2-12.

SUPPLEMENTARY INFORMATION: A New Source Review (NSR) program is one which assures that a new or modified industrial plant (source) meets industrial equipment standards and operating procedures that protect air quality. NSR regulations were and are established as a check point through which plans for a source must pass. The equipment and processes of these plans are compared to the standards for equipment and processes of an industrial category into which the plant falls. If all of the elements of the proposed process are in compliance with the guidelines of the NSR regulation, it is reasonable to predict that the environmental harm will be minimal for such a plant being built.

The State of New Mexico seeks to establish NSR regulations that would allow the State to issue permits to allow sources to construct or modify processes in areas where a NAAQS is being



exceeded, without interfering with the continuing progress toward attaining the standard. The EPA approved the New Mexico Control Strategy demonstrating attainment of the NAAQS (Part D SIP) on April 10, 1980 (45 FR 24509) with a condition that revisions to permit regulations be submitted to EPA. The Governor of New Mexico (The Governor), in an May 20, 1980, letter to EPA, committed to continue (in the meantime) the policy of not issuing permits to new or modified major sources in all New Mexico nonattainment areas. The Governor submitted the adopted regulation to EPA on November 5, 1985, for incorporation into the SIP.

This regulation (AQCR 709) applies to all the State of New Mexico with the exception of Bernalillo County. In accordance with Section 74-2-4 of the State of New Mexico Air Quality Control Act, this county is authorized to provide for the local administration and enforcement of the Act.

The Clean Air Act (as amended August 1977) (Act) sets forth requirements for plans for nonattainment areas in Part D of the Act. Section 172 sets forth nonattainment plan provisions and section 173 sets forth permit requirements. The Act requires that EPA develop regulations to fulfill the requirements of the Act. The regulations that fulfill this requirement are found in 40 CFR Part 51, Subpart I, Review of New Sources and Modifications. A State Implementation Plan (SIP) satisfying sections 172(b)(6) and 173 of the Act is required to meet the conditions as set forth in 40 CFR 51.165(a).

The State of New Mexico submitted a SIP revision in 1979 to fulfill the nonattainment area requirements of the Act. The SIP revision was conditionally approved. It had a shortcoming in that it did not have a NSR program for nonattainment areas. As a temporary substitution for this requirement, the Governor agreed to institute a construction ban on all new major sources and modifications until such time as a NSR permitting program for nonattainment areas could be instituted and approved. EPA agreed to this. The State has fulfilled the requirements of this deficiency by submitting the permitting program regulations for nonattainment areas in the form of New Mexico AQCR 709.

The sources to which New Mexico AQCR 709 apply are new and modified sources that: (1) Are in a nonattainment area and would emit the nonattainment pollutant in a specific amount (10 lb/hr or 25 tpy), or (2) are located within an attainment area, but their emissions

would have a significant impact on a neighboring nonattainment area. The nonattainment areas for New Mexico are: (1) Grant County for sulfur dioxide (SO<sub>2</sub>) and total suspended particulates (TSP); and (2) Bernalillo County for carbon monoxide (CO) and TSP. Pursuant to 74-2-4 of New Mexico's Air Quality Control Act, Bernalillo County is authorized to administer an independent program, however, and AQCR 709 does not apply to Bernalillo County.

EPA reviewed AQCR 709 for compliance with the requirements of Title 40 of the Code of Federal Regulations (40 CFR), Part 51, and for compliance with Part D of Title I of the Clean Air Act, as amended.<sup>1</sup> This review is available at the EPA Region 6 address listed above. The highlights of the review are given below.

New Mexico AQCR 709 applies to the same types of sources as New Mexico AQCR 702, the permitting regulation for sources in all areas of the state, which EPA approved as a SIP requirement in 1973 (38 FR 12704). New Mexico AQCR 702 is for sources in NAAQS attainment areas, whereas New Mexico 709 is for sources in NAAQS nonattainment areas. Consequently, both regulations require permits of new or modified sources with new or increased emissions greater than 10 pounds per hour or 25 tons per year or with emissions of a hazardous pollutant.

The baseline in AQCR 709 for calculating emission reduction credit for offsets is the most stringent emission limitation applicable to the source, whether federal or state, including a federally enforceable permit which is applicable and in effect at the time the application to construct is filed. Where there is no emission limitation for the particular source of offsets in either a state AQCR or federally enforceable permit, actual emissions from which offset credit is obtained will form the baseline. Where the allowable emissions from the offsetting source are greater than its potential to emit, the potential to emit forms the baseline. Shutdown credits for offsetting are also allowed by AQCR 709 with the same restrictions currently found at 40 CFR 51.165(a)(3)(ii)(c) (formerly 40 CFR 51.18(j)(3)(ii)(c)). The regulation requires, as a general rule, an emission reduction (offset) that is at least 20 percent greater than the proposed new allowable emissions, allowing the requirement of EPA regulations for a net air quality benefit to be achieved. Provision is made for the excess to be either greater

or less than 20 percent if circumstances indicate another amount is more appropriate.

New sources and modifications are required by AQCR 709 to meet and maintain the Lowest Achievable Emission Rate (LAER). Additionally, all major stationary sources owned or operated in the State by owners or operators of the proposed new source or modification must be in compliance with or on a compliance schedule for all applicable emission limitations.

Section B.8 of AQCR 709 requires new sources and modifications to undergo performance testing. The section allows a source to be exempted from this requirement, however, at the discretion of the Director of the New Mexico Environmental Improvement Division (NMEID). A source is further allowed, subject to approval of the NMEID, to propose its own type of performance test. On its face, section H would allow New Mexico to waive or amend performance testing required by NSPS and NESHAPS. Discussions with the staff of NMEID, however, indicate that the regulation was not adopted with such an intent and will not be administered in that fashion. Prior to EPA's final approval of the regulation, however, it will be necessary for the State to supplement the record with a written committal letter agreeing not to waive or amend NSPS or NESHAPS mandated performance testing.

Section H of AQCR 709 contains a provision for banking of emission reductions that will be used as offset credits. The regulation contains requirements to ensure the reductions are surplus, permanent, enforceable, and quantifiable.

New Mexico contains only one area, Bernalillo County, which was granted an extension until December 31, 1987, for attainment of the NAAQS for carbon monoxide. Section 172(b)(11)(A) of the Clean Air Act requires nonattainment area permitting regulations for extension areas to contain a provision requiring proposed new major sources or major modifications to perform alternate siting analysis. This analysis must demonstrate that the benefits of locating the source of modification in the extension nonattainment area significantly outweigh the environmental cost. Under the provisions of State law, Bernalillo County and the City of Albuquerque, through their joint Air Quality Control Board, have the sole authority to issue new and modified source permits within the geographical limits of Bernalillo County. The nonattainment area permitting regulations for Albuquerque/

<sup>1</sup> Evaluation Report for New Mexico Air Quality Control Regulation 709, Permits Nonattainment Areas, February 1988.



Bernalillo County will address alternate siting. AQCR 709 is not required to and does not contain such a provision.

Proposed new major stationary sources or major modifications which would locate in a nonattainment area and which could potentially degrade visibility in Mandatory Federal Class I areas would be required by AQCR 709 to demonstrate consistency with progress toward the national visibility goal. Sources may take into account costs and time necessary for compliance, the energy and non-air quality environmental impacts of compliance and the useful life of the source. The state regulation also contains a provision requiring notification of the affected Federal Land Managers and for modeling of the environmental effects of the source or modification and associated growth. The visibility protection regulations contained in AQCR 709 pertain only to nonattainment area sources and are one element of a comprehensive visibility protection plan.

The definitions in AQCR 709 all either exactly or substantially correlate with the federal definitions found in the CFR and the Clean Air Act. There is, however, no definition of volatile organic compound (VOC). Resolution of this deficiency is addressed below.

NM AQCR 709, section L(7), defines the term "Building, structure, facility, or installation". The Federal definition for "Building, structure, facility, or installation", 40 CFR 51.165(a)(1)(ii), was affected by a court decision on January 17, 1984. On this date the Court of Appeals for the D.C. Circuit (*NRDC vs. EPA*) reaffirmed the exclusion of the "to and from" vessel emissions from the secondary emissions calculations (40 CFR 51.165(a)(1)(viii)), but overturned the applicability exclusion for all dockside vessel emissions that could be attributable to stationary sources (i.e. marine terminals), and the court remanded the issue of whether dockside vessel emissions should be included in primary emission calculations to the agency for further consideration. EPA has not yet completed that consideration, but current agency policy dictates that states not exempt dockside vessels from their definitions of "building, structure, facility, or installation." New Mexico's definition, at section L(7) of AQCR 709 does not exempt dockside vessels and is approvable.

It is necessary that regulation 709 be in compliance with the Federal Stack Height and Dispersion Technique Regulations. The Governor of New Mexico submitted to EPA on August 15, 1986, a SIP revision for Stack Height and

Dispersion Technique Regulations. EPA proposed to approve the State Stack Height Regulations on September 25, 1987, (52 FR 36054), contingent upon NMEID resolving and correcting certain deficiencies. The State has incorporated the EPA comments and revised the regulation, and is in the process of adopting and submitting it to EPA for final approval.

The EPA's stack height regulations were challenged in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983 within-formula stack height increases from demonstration requirements (40 CFR 51.100(kk)(2));
2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks (40 CFR 51.100(hh)(2)(ii)(A); and
3. Grandfathering pre-1979 use of the refined H + 1.5L formula (40 CFR 51.100(ii)(2)).

Under this program, New Mexico will be issuing permits and establishing emission limitations that may be affected by the court ordered reconsideration of the stack height regulations promulgated on July 8, 1985 (50 FR 27892). For this reason, the EPA requires that the State include the following caveat in all potentially affected permit approvals until the EPA completes its reconsideration of remanded portions of the regulations and promulgates any necessary revisions:

In approving this permit, New Mexico Environmental Improvement Division has determined that the application complies with the applicable provisions of the stack height regulations as revised by the EPA on July 8, 1985 (50 FR 27892). Portions of the regulations have been remanded by a panel of the U.S. Court of Appeals for the D.C. Circuit in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). Consequently, this permit may be subject to modification if and when the EPA revises the regulation in response to the court decision. This may result in revised emission limitations or may affect other actions taken by the source owners or operators.

New Mexico must make an enforceable commitment to include this caveat in all affected permits before the EPA can take final action approving the NSR program.

Before EPA finally approves the States NSR regulation, AQCR 709 should be amended to address four potential problems. These, along with the State's

"plantwide definition of source", are discussed below:

(1) 40 CFR 51.165(a)(3)(ii)(e) requires that the State's plan provide that all emission reductions claimed as offset credit be federally enforceable. In States with dual permitting requirements, this means that such reductions must be reflected in preconstruction permits which are federally enforceable, as opposed to other types of permits, e.g., operating permits, which generally are not. Section C(3) of AQCR 709, however, simply states that "such reductions shall be incorporated as modifications to pertinent permits." Because New Mexico will not issue separate construction and operating permits under AQCR 709, its failure to specify that "pertinent" meant "federally enforceable" appears reasonable. In an abundance of caution, however, and to eliminate the possibility of confusion in the future, EPA suggests the State add the words "federally enforceable" to the regulation between "pertinent" and "permits."

(2) New Mexico AQCR 709 has provisions for offset exemptions in Section J (Exemptions to D.4. and D.5.), number 1, part b. (resource recovery facilities). Attainment demonstrations to show attainment of the NAAQS do not exist for all pollutants in all nonattainment areas (secondary TSP and SO<sub>2</sub> for Grant County). Without an attainment demonstration there can be no growth allowance, which is required for an offset exemption. A qualifying statement must be placed into the regulations that there can be no exemption from the requirements of D.4 and D.5 for resource recovery facilities in nonattainment areas unless there exists a Federally approved attainment demonstration and a Federally approved growth allowance for that nonattainment area.

(3) New Mexico AQCR 709, under Section H (Banking of Emission Reductions) must have language inserted to the effect that banked emissions shall be treated the same as all other emission reduction credits (ERCS).

(4) The regulations must contain a definition of Volatile Organic Compound (VOC). The EPA recommended definition of VOC is as follows:

**Volatile Organic Compound (VOC)**—Any organic compound which participates in atmospheric photochemical reactions; that is, any organic compound other than those which the Administrator designates as having negligible photochemical reactivity.

With regard to Section L, Definition number 16, "Major Stationary Source": The State has selected the "plantwide



definition." On October 14, 1981, the Environmental Protection Agency (EPA) revised the new source review (NSR) regulations in 40 CFR Part 51 to give States the option of adopting the "plantwide" definition of stationary source in nonattainment areas (see 46 FR 50766). This definition provides that only physical or operational changes that result in a net increase in emissions at the entire plant require a NSR permit. For example, if a plant increased emissions at one piece of process equipment but reduced emissions by the same amount at another piece of process equipment at the plant there would be no net increase in emissions at the plant, and therefore no modification to the source. The plantwide definition is in contrast to the so-called "dual" definition (or a definitional structure like that in the 1979 offset ruling (44 FR 3274), which has much the same effect as the dual definition); under the dual definition, the emissions from each physical or operational change are gauged without regard to reductions elsewhere at the plant.

In the October 1981 Federal Register notice, EPA set forth its rationale for allowing use of the plantwide definition (46 FR 50766-50769). In its view, allowing use of the plantwide definition was a reasonable accommodation of the conflicting goals of Part D of the Clean Air Act (Act); on the one hand, reasonable further progress (RFP) and timely attainment of national ambient air quality standards (NAAQS), and on the other, maximum State flexibility and economic growth. The EPA recognized that use of the plantwide definition would bring fewer plant modifications into the nonattainment permitting process, but emphasized that this generally would not interfere with RFP and timely attainment primarily because the States under the demands of Part D eventually would have adequate State implementation plans (SIP's) in place. For instance, EPA stated:

Since demonstration of attainment and maintenance of the NAAQS continues to be required, deletion of the dual definition increases State flexibility without interfering with timely attainment of the ambient standards and so is consistent with Part D (46 FR 50767 col. 2).

The EPA added that in any event the use of a dual definition, by bringing more plant modifications through the NSR Process or subjecting them to the construction ban (40 CFR 52.24), may discourage replacement of older, dirtier processes and hence retard not only economic growth, but also progress toward clean air. The EPA also pointed out that under the plantwide definition

new equipment would still be subjected to any applicable new source performance standard and that wholly new plants, as well as any modifications that resulted in a significant net emissions increase, would still be subject to NSR. Thus, EPA saw no significant disadvantage in the plantwide definition from the environmental standpoint, as against the advantages from the standpoints of State flexibility and economic growth. It regarded the plantwide definition as presenting, at the very worst, environmental risks that were manageable because of the independent impetus to create adequate Part D plans, and at the best the potential for air quality improvements driven by the market place.

As a result, EPA ruled that a State wishing to adopt a plantwide definition generally has complete discretion to do so, and it set only one restriction on that discretion. If a State had specifically projected emission reductions from its NSR program as a result of a dual or similar definition and had relied on those reductions in an attainment strategy that EPA later approved, then the State needed to revise its attainment strategy as necessary to accommodate reduced NSR permitting under the plantwide definition (46 FR 50767 col. 2, 50769 col. 1).

In 1984, the Supreme Court upheld EPA's action as a reasonable accommodation of the conflicting purposes of Part D of the Act, and hence well within EPA's broad discretion. *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 104 S. Ct. 2778. Specifically, the Court agreed that the plantwide definition is fully consistent with the Act's goal of maximizing State flexibility and allowing reasonable economic growth. Likewise, the Court recognized that EPA had advanced a reasonable explanation for its conclusion that the plantwide definition serves the Act's environmental objectives as well (see 104 S. Ct. at 2792). The EPA today generally reaffirms the rationales stated in the 1981 rulemaking. Those rationales were left undisturbed by the Supreme Court decision. Further, EPA has not received any empirical information since the 1981 rulemaking that would require a departure from the basic reasoning in support of the plantwide definition.

On November 5, 1985, the State of New Mexico submitted a SIP revision that would add a NSR program for nonattainment areas to the SIP. This program uses a plantwide definition of source. The EPA previously approved the Part D SIP for the relevant nonattainment areas on the basis of an

attainment demonstration, and the State relied in that demonstration on the construction ban to avoid increases in emissions from new sources. The State, however, has adjusted its attainment strategy demonstration by accounting for any increases in emissions caused by the removal of the construction ban by requesting an additional 20% emissions offset when sources are subject to major NSR requirements. Therefore, EPA here proposes to approve the adoption of a plantwide definition in accordance with its 1981 action inasmuch as the State has modified its attainment plan to assure RFP and attainment of the NAAQS on the original schedule approved in the plan.

#### Proposed Action

EPA is proposing to approve New Mexico AQCR 709. This approval is contingent upon the State making the changes discussed at the end of the Supplemental Information Section.

#### Regulatory Flexibility

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (see 46 FR 8709.)

#### Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

#### List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Authority: 42 U.S.C. 7401-7642.

Date: March 28, 1988.

Robert E. Layton, Jr.,

Regional Administrator (6A).

[FR Doc. 19784 Filed 8-30-88; 8:45 a.m.]

BILLING CODE 6560-50

#### 40 CFR Part 60

[AD-FRL-3438-4]

**Standards of Performance, for New Stationary Sources; Reference Methods; Amendments to the Introduction and Methods 6, 6C, 7A, 8, and 10A**

AGENCY: Environmental Protection Agency (EPA).



**ACTION:** Proposed rule and notice of public hearing.

**SUMMARY:** The purpose of this proposed rule is to amend the introduction and Methods 6, 6C, 7A, 8, and 10A of Appendix A. The introduction is amended by revising obsolete wording. Method 6 is amended by adding procedures for testing in the presence of ammonia; Method 6C is amended to expand the allowable mid- and high-calibration gas ranges. Methods 7A and 10A are amended to revise inaccurate wording, and Method 8 is amended to add quality assurance (QA) and quality control (QC) procedures. The intended effect is to update portions of Appendix A to make them more applicable to current testing needs.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

**DATES:** *Comments.* Comments must be received on or before November 14, 1988.

**Public Hearing.** If anyone contacts EPA requesting to speak at a public hearing by September 21, 1988, a public hearing will be held October 17, 1988, beginning at 10:00 a.m. Persons interested in attending the hearing should call the contact mentioned under **ADDRESSES** to verify that a meeting will be held.

**Request to Speak at Hearing.** Persons wishing to present oral testimony must contact EPA by September 21, 1988.

**ADDRESSES:** *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), Attention: Docket Number A-87-17, U.S. Environmental Protection Agency, South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460.

**Public Hearing.** If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Laboratory, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Foston Curtis, Emission Measurement Branch, Technical Support Division (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2237.

**Docket.** Docket No. A-87-17, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460. A

reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Foston Curtis or Roger Shigehara, Emission Measurable Branch, Technical Support Division (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2237.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. The Rulemaking**

Where ammonia is encountered under Method 6 testing conditions, acceptable alternative procedures are required for removing its interference effects. Specific procedures or examples of how this may be done are not given in the method. The proposed addition to Method 6 will list a procedure that has been shown to work in this case.

The QA procedures that are currently a part of Method 6 are being added to Method 8 since both methods employ the same analytical technique. The tester will be required to analyze samples with each set of compliance samples, in order to improve the quality of compliance data. The current regulations includes only limited QA requirements. The amendments to Methods 6C, 7A, and 10A are minor and editorial in nature.

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. Rather, this rulemaking amends testing procedures to which the affected facilities are already subject. A slight increase in the Method 8 testing costs will be incurred as a result of implementing the new QA and QC procedures.

##### **II. Administrative Requirements**

###### **A. Public Hearing**

A public hearing will be held, if requested, to discuss the proposed rulemaking in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, D.C. (see **ADDRESSES** section of this preamble).

###### **B. Docket**

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are to: (1) Allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) serve as the record in case of judicial review except for interagency review materials (Section 307(d)(7)(A)).

###### **C. Office of Management and Budget Review**

**Executive Order 12291 Review.** Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This rulemaking would not result in any of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a "major rule." It will not have an annual effect on the economy of \$100 million or more; nor will it result in a major increase in costs or prices. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rulemaking was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

###### **D. Regulatory Flexibility Act Compliance**

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few additional costs will be incurred. The anticipated increase in costs due to implementing the amendments to Method 8 should be 5 percent or less for a typical test.

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

###### **List of Subjects in 40 CFR Part 60**

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference, Fossil-fuel-fired steam generators, and Sulfuric acid plants.



Dated: August 29, 1988.

Richard Wilson,  
Assistant Administrator for Air and  
Radiation.

It is proposed that Appendix A of 40 CFR Part 60 be amended as follows:

#### PART 60—[AMENDED]

1. The authority for 40 CFR Part 60 continues to read as follows:

Authority: Secs. 101, 111, 113, 116, and 301 of the Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

#### Appendix A—Amended

2. By revising the title of Appendix A from "Reference Methods" to read "Test Methods".

3. By amending the introduction which follows the list of test methods as follows:

a. By revising the first sentence of the second paragraph to read as follows:

Within each standard of performance, a section titled "Test Methods and Procedures" is provided to: (1) Identify the test methods to be used as reference methods to the facility subject to the respective standard and (2) identify any special instructions or conditions to be followed when applying a method to the respective facility.

b. By revising the last sentence of the second paragraph, to read as follows:

Similarly, for sources subject to emission monitoring requirements, specific instructions pertaining to any use of a test method as a reference method are provided in the subpart or in Appendix B.

c. By removing the word "reference" wherever it occurs, and in its place, inserting the word "test" in the following places:

(1) First paragraph, first and second sentences.

(2) Second paragraph, second sentence.

(3) Third paragraph, first sentence.

(4) Fourth paragraph, first sentence.

(5) Fifth paragraph, first, second, and fourth sentences.

(6) Sixth paragraph, first sentence and second from last sentence.

4. By amending Method 6 as follows:

a. By removing the last sentence in section 1.2 and inserting, in its place, the following sentence: "If free ammonia is present (this can be determined by knowledge of the process and the

presence of white particulate matter in the probe and isopropanol bubbler), the procedures in section 7.2 shall be used."

b. In section 3.1.1, by adding a sentence at the end of the section to read as follows:

"Unless otherwise specified, this water shall be used throughout this method."

c. By removing the words "deionized, distilled" or "distilled," wherever they occur in the following places:

(1) Section 3.1.2, first and third sentences.

(2) Section 3.1.3, first sentence.

(3) Section 3.1.4, first sentence.

(4) Section 3.2.2, first sentence.

(5) Section 3.3.3., first sentence.

(6) Section 3.3.4, first sentence.

(7) Section 4.2, fourth sentence.

(8) Section 4.3, second paragraph, first sentence.

d. By revising section 3.2.1 to read as follows:

3.2.1 Water. Same as in section 3.1.1.

e. By revising section 3.3.1, to read as follows:

3.3.1 Water. Same as in section 3.1.1.

f. By adding a new section 3.3.7. to read as follows:

3.3.7 Hydrochloric Acid (HCl) Solution. 0.1 N (For use in section 7.2). Carefully pipette 8.6 ml of concentrated HCl into a 1-liter volumetric flask containing water. Dilute to volume with mixing.

g. By adding a new section 7.2 to read as follows:

7.2 Elimination of Ammonia Interference. The following procedures shall be used in addition to those specified in the method when sampling at sources having ammonia emissions.

7.2.1 Sampling. The probe shall be maintained at 275° and equipped with a high-efficiency in-stack filter (glass fiber) to remove particulate matter.

7.2.2 Sample Recovery. Recover the sample according to section 4.2 except for discarding the contents of the midjet bubbler. Add the bubbler contents to the polyethylene bottle containing the rest of the sample, and rinse the bubbler with water. If sulfur trioxide is present in the gas stream, transfer the contents of the midjet bubbler to a separate polyethylene bottle.

7.2.3 Sample Analysis. Follow the procedures in section 4.3, except add 0.5 ml of 0.1 N HCl to the Erlenmeyer flask and mix before adding the indicator. For samples

containing sulfur trioxide, use the following analysis procedure.

Analyze the peroxide and isopropanol sample portions separately. Analyze the peroxide portion as described in Section 4.3. Sulfur trioxide is determined by difference using sequential titration of the isopropanol portion of the sample. Transfer the contents of the isopropanol storage container to a 100-ml volumetric flask, add 0.5 ml of 0.1 N HCl, and dilute to exactly 100 ml with water. Pipette a 20-ml aliquot of this solution into a 250-ml Erlenmeyer flask, add 80 ml of 100 percent isopropanol and two to four drops of thion indicator, and titrate to a pink endpoint using 0.0100 N barium perchlorate. Repeat and average the titration volumes that agree within 1 percent or 0.2 ml., whichever is larger. Use this volume in Equation 6-2 to determine the sulfur trioxide concentration.

From the flask containing the remainder of the isopropanol sample, determine the fraction of SO<sub>2</sub> collected in the bubbler by pipetting 20-ml aliquots into 250-ml Erlenmeyer flasks. Add 5 ml of 3 percent hydrogen peroxide, 100 ml of 100 percent isopropanol, and two to four drops of thion indicator, and titrate as before. From this volume, subtract the titrant volume determined for sulfur trioxide, and add the titrant volume determined for the peroxide portion. This final volume constitutes V<sub>p</sub>, the volume of barium perchlorate used for the SO<sub>2</sub> sample.

5. By revising sections 5.3.1 and 5.3.2 of Method 6C to read as follows:

5.3.1 High-Range Gas. Concentration equivalent to 80 to 100 percent of the span.

5.3.2 Mid-Range Gas. Concentration equivalent to 40 to 60 percent of the span.

6. In Method 7A, by removing the word "analysis" in the last sentence of section 4.2 and inserting, in its place, the word "recovery".

7. In Method 8, by adding new sections 3.3.6, 4.4., 4.5, and 6.9 to read as follows:

3.3.6 Quality Assurance Audit Samples. Same as in Method 6, section 3.3.6.

4.4 Quality Control Procedures. Same as in Method 5, section 4.4.

4.5 Audit Sample Analysis. Same as in Method 6, section 4.4.

6.9 Relative Error (RE) for QA Audit Samples. Same as in Method 6, section 6.4

8. In Method 10A, by removing the word "month" in the last sentence of section 1.5.3 and inserting, in its place, the word "week".

[FR Doc. 88-19783 Filed 8-30-88; 8:45 am]

BILLING CODE 6560-50-M



# Notices

Federal Register

Vol. 53, No. 169

Wednesday, August 31, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

August 26, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 95-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA,  
OIRM, Room 404-W, Admin. Bldg.,  
Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMS Desk Officer of your intent as early as possible.

### New Collection

#### Farmers Home Administration

##### 7 CFR 1910-A, Receiving and Processing Applications

None

Recordkeeping, On occasion

Individuals or households, Farms,

Businesses or other for-profit; 225,000 responses; 200,900 hours.

Jack Holston, (202) 382-9736

### Revisions

#### Rural Electrification Administration

##### Financial and Statistical Report

REA Form 479

Annually

Small businesses or organizations; 1,000 responses; 14,000 hours

Monte Heppe, Jr., (202) 382-8530

#### Rural Electrification Administration

##### 7 CFR 1765, Telephone Materials, Equipment, and Construction—Telephone Program

REA-Forms 281, 527, 563 and 25 other misc. forms

On occasion

Small businesses or organization; 2765 responses; 1898 hours

John D. Some, (202) 382-8529

#### Food and Nutrition Service

##### WIC Monthly Financial and Program Status Report

FNS-498

Monthly

State or local governments; 1,044 responses; 33,304 hours

Maxine McMillian or Barbara Jendrysik, (703) 756-3710

### Extensions

#### Forest Service

##### Insert and Disease Detection

FS-34001

On occasion

Individuals or households, State or local governments; 219 responses; 55 hours

Richard Fowler, (703) 235-1554

#### Agricultural Marketing Service

##### 7 CFR Part 54—Meats, Prepared Meats, and Meat Products (Grading, Certification, and Standards

LS-313 and LS-315

On occasion

Businesses or other for-profit; 38,724 responses; 778 hours

Patricia L. Griffith, (202) 382-1246

#### Agricultural Marketing Service

##### Tomatoes Grown in Florida (Marketing Order No. 966)

Administrative Committee forms

Recordkeeping, On occasion, Weekly, Monthly, Annually, Daily

Businesses or other for-profit; 170 responses; 18 hours

Virginia M. Olson, (202) 447-5057

#### Food and Nutrition Service

##### Issuance Reconciliation Report

(Revision of current FNS-46, ATP Reconciliation Report)

FNS-46

Recordkeeping Monthly

State or local governments; 4,182 responses; 38,781 hours

Paul Jones, (703) 756-3385

#### Rural Electrification Administration

##### 7 CFR Part 1770, Accounting, Subpart A, Accounting System Requirements Recordkeeping

Non-profit institutions; Small businesses or organizations; 992 recordkeepers; 257,920 hours

### FNS/FDD

#### Destination Data Sheet

FNS-7

On occasion

State or local governments; 3,395 responses; 1,698 hours

Bessie Bradford/Susie Proden, (703) 756-3660

#### Food and Nutrition Service

##### Participation by Charitable Institutions

FNS Instruction 706-1

Semi-annually

State or local governments; 57 responses; 171 hours

Susan Proden, (703) 756-3660

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 88-19846 Filed 8-30-88; 8:45am]

BILLING CODE 3410-01-M

### Forest Service

#### Implementation of Management Activities in the Jim-Fatty Area; Flathead National Forest, Montana

**ACTION:** Notice of Intent to Prepare an Environmental Impact Statement.

**SUMMARY:** The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose



the environmental impacts of site-specific forest management activities necessary for implementation of the Flathead National Forest Land and Resource Management Plan (EIS and Record of Decision, January 22, 1986) in the Jim-Fatty area of the Swan Lake Ranger District, Flathead National Forest, Lake and Missoula Counties, Montana. Management activities may include wilderness access site construction, trailhead renovation, wildlife habitat improvement, timber harvest, recreational lake access development, livestock grazing, road construction and reconstruction, timber stand improvement, and road management for the approximate period from 1989 to 1998. The agency invites written comments and suggestions on the scope of the analysis and management opportunities. In addition, the agency gives notice of the full environmental analysis and decision making process that will occur on the proposal so that interested and affected parties are aware of how they may participate and contribute to the final decision.

**DATE:** Comments concerning the scope of the analysis must be received by September 30, 1988.

**ADDRESS:** Send written comments to William L. Pederson, District Ranger, Swan Lake Ranger District, P.O. Box 370, Bigfork, MT 59911.

**FOR FURTHER INFORMATION CONTACT:** The Jim-Fatty Interdisciplinary Team Leader, Swan Lake Ranger District, Flathead National Forest, P.O. Box 370, Bigfork, MT 59911.

**SUPPLEMENTARY INFORMATION:** The Forest Service proposes to implement forest management activities in the Jim-Fatty area over the approximate period from 1989 to 1998. These management activities may include wilderness access site construction, trailhead renovation, wildlife habitat improvement, timber harvest, recreational lake access development, livestock grazing, road construction and reconstruction, timber stand improvement, and road management.

Management activities under consideration would occur in an area encompassing approximately 28,000 acres of multi-ownership lands in the northwestern portion of the Upper Swan Geographic Unit, as delineated in the Flathead Forest Plan. Of this total, approximately 11,500 acres are National Forest System lands.

Included in the area of analysis are all or portions of the following drainages: Fatty, Cedar, Moore, Piper, Jim, and North Fork Cold Creeks. The area is bordered on the west by the Mission

Mountains Wilderness and on the east by the Swan River. Proposed management activities will be considered in all or portions of section 1, 2, 11-14, and 24, T21N, R18W; section 3-10, and 18, T21N, R17W; sections 1-4, 9-15, 23-26, 35, and 36, T22N, R18W; sections 5-8, 17-21, and 28-34, T22N, R17W; and sections 33-35, T23N, R18W, Principal Montana Meridian.

The analysis will consider a range of alternatives. One of these will be the "no-action" alternative, in which all activities would be deferred during the decade. Other alternatives may include management activities which vary in time and space to provide emphasis on non-timber resources, emphasis on development of the biological potential of the resources, or emphasis on timber production. The analysis will disclose the environmental effects of alternative ways of implementing land and resource management direction contained in the Flathead National Forest Land and Resource Management Plan (EIS and Record of Decision, January 22, 1986).

Public participation is important during the analysis. The first point of public participation is during the scoping process (40 CFR 1501.7). The Forest Service is seeking information and comments from Federal, State, and local agencies and individuals or organizations who may be interested in or affected by the proposed action. This information will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives (i.e., direct, indirect, and cumulative effects, and connected actions).
6. Determination of potential cooperating agencies and task assignments.

Scoping has already been utilized for the development of an environmental assessment (EA). Initial scoping began on January 8, 1987 through letters sent to potentially affected parties. Numerous newspaper articles have described the analysis process. An open house and field trip were also offered to the public in order to solicit comments and information. An EA was prepared in April, 1988. Approximately 50 copies of the EA were distributed to persons or groups indicating interest in the

analysis. Numerous written responses to the assessment have been received.

Notwithstanding the scoping that has been done to date, additional comments or questions are being solicited at this time. Comments received by September 30, 1988 will be considered in the preparation of the DEIS. The Forest Service has not yet determined whether any public meetings will be held.

The U.S. Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in November, 1988. At that time the EPA will publish a notice of availability of the DEIS in the *Federal Register*.

The comment period in the DEIS will be 45 days from the date the EPA's notice of availability appears in the *Federal Register*. It is very important that those interested in the management of the Jim-Fatty area participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the DEIS or the merits of the alternatives discussed (40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions (*Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978)). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS) (*Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

Following the comment period for the DEIS the comments will be analyzed and considered by the Forest Service in preparing the FEIS. The Forest Service is required to respond in the FEIS to the comments received (40 CFR 1503.4). The FEIS is scheduled to be completed in January, 1989.

The responsible official will consider the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making a decision regarding the proposal. The responsible official will document the decision and the rationale for the



decision in the Record of Decision. That decision will be subject to review under applicable Forest Service regulations.

William L. Pederson, District Ranger for the Swan Lake Ranger District, Flathead National Forest, is the Responsible Official.

Date: August 23, 1988.

William L. Pederson,

District Ranger, Swan Lake Ranger District, Flathead National Forest.

[FR Doc. 88-19831 Filed 8-30-88; 8:45 am]

BILLING CODE 3410-11-M

#### Kenai Management Area Analysis

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

Background: The Department of Agriculture, Forest Service published a Notice of Intent to prepare an Environmental Impact Statement for the Kenai Management Area Analysis on July 22, 1988 (53 FR 27737). The Management Area Analysis will identify if, how and where management activities specified by area in the Chugach National Forest Land and Resource Management Plan are to be implemented.

The Notice of Intent did not identify the responsible official. Dalton Du Lac, Forest Supervisor Chugach National Forest is the responsible official.

Date: August 23, 1988.

Ken Rice,

Acting Forest Supervisor.

[FR Doc. 88-19731 Filed 8-30-88; 8:45 am]

BILLING CODE 3410-11-M

#### DEPARTMENT OF COMMERCE

##### Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation—1987 Panel Wave 7.

Form Number: SIPP 7700 Wave 7

Questionnaire, SIPP 84/7705(L)

Introductory Letter.

Type of Request: Revision.

Burden: 11,760.

Avg Hours Per Response: 30 minutes.

Needs and Uses: This survey provides data on income, employment and household composition, taxes, assets, in-kind income, and related subjects to estimate the effects of Executive and Legislative decisions.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 25, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-19819 Filed 8-30-88; 8:45 am]

BILLING CODE 3510-07-M

##### Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis.

Title: Annual Survey of Foreign Direct Investment in the United States.

Form Number: Agency—BE-15, OMB—0608-0034.

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Burden: 3,300 respondents; 30,000 reporting hours.

Average Hours Per Response: 9 hours.

Needs and Uses: The survey collects data on the financial and operating characteristics of U.S. companies that are foreign owned. Universe estimates are developed from the reported sample data. The data are needed to measure the size of foreign direct investment in the United States, monitor changes in such investment, assess its impact on the U.S. economy, and, based upon this assessment, make informed policy decisions regarding foreign direct investment in the U.S.

Affected Public: Businesses or other for-profit institutions.

Frequency: Annually [except years in which a BE-12 benchmark survey is taken].

Respondent's Obligation: Mandatory.

OMB Desk Officer: John Griffen, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 25, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-19820 Filed 8-30-88; 8:45 am]

BILLING CODE 3510-M

##### Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration.

Title: Quarterly Report on Guaranteed Loans.

Form Number: Agency—ED 700; OMB—0610-0010.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 45 respondents; 180 reporting hours.

Average Time Per Response: .33 hours.

Needs and Uses: This application provides information and assurances necessary for awarding EDA loan guaranty.

Affected Public: Financial institutions servicing an EDA guaranteed loan.

Frequency: Quarterly.

Respondents Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: John Griffen, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.



Dated: August 25, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-19821 Filed 8-30-88; 8:45 am]

BILLING CODE 3510-07-M

### Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration.

Title: Preapplication and Application for Public Works Awards from Governmental and Non-Governmental Applicants.

Form Number: Agency—ED-101P and ED-101A; OMB—0610-0011.

Type of Request: Revision of a currently approved collection.

Burden: 101P-308 respondents; 9240 reporting hrs. 101A-238 respondents; 20944 reporting hrs.

Average Hours Per Response: 30 hours—101P; 88 hours—101A.

Needs and Uses: This preapplication and application provide information and assurances necessary for the selection and award of public works grants.

Affected Public: State and local units of government, Indian tribes, public authorities and nonprofit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: John Griffen, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: August 25, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-19822 Filed 8-30-88; 8:45 am]

BILLING CODE 3510-CW-M

### Minority Business Development Agency

#### Business Development Center Applications; Phoenix, AZ

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

**SUMMARY:** The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is \$184,260 in Federal funds and a minimum of \$32,516 in non-Federal contributions for the budget period February 1, 1989 to January 31, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Phoenix, Arizona geographical service area.

The I.D. Number for this project will be 09-10-89001-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one

evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of \$50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of \$500,000 or less and 35% of the total cost for firms with gross sales of over \$500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

**CLOSING DATE:** The closing date for applications is October 5, 1988. Applications must be postmarked on or before October 5, 1988.

**ADDRESS:** San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105, 415/974-9597.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105. September 13, 1988.

**FOR FURTHER INFORMATION CONTACT:** Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

**SUPPLEMENTARY INFORMATION:** Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11,800 Minority Business Development (Catalog of Federal Domestic Assistance)

Xavier Mena,  
Regional Director, San Francisco Regional Office.

August 25, 1988.

[FR Doc. 88-19803 Filed 8-30-88; 8:45 am]

BILLING CODE 3510-21-M



**Business Development Center  
Applications; Sacramento, CA****AGENCY:** Minority Business  
Development Agency.**ACTION:** Notice.

**SUMMARY:** The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to the availability of funds. The cost of performance for the first 12 months is \$184,260 in Federal funds and a minimum of \$32,516 in non-Federal contributions for the budget period March 1, 1989 to February 28, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Sacramento, California geographic service area.

The I.D. Number for this project will be 09-10-89003-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDC funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost

through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of \$50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of \$500,000 or less and 35% of the total cost for firms with gross sales of over \$500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

**CLOSING DATE:** The closing date for applications is November 16, 1988. Applications must be postmarked on or before November 16, 1988.

**ADDRESS:** San Francisco Regional Office, Minority Business Development Agency, U. S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105, 415/974-9597.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U. S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105. October 13, 1988.

**FOR FURTHER INFORMATION CONTACT:** Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

**SUPPLEMENTARY INFORMATION:** Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development  
(Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional  
Office.

August 25, 1988.

[FR Doc. 88-19804 Filed 8-30-88; 8:45 am]

BILLING CODE 3510-21-M

**Business Development Center  
Applications; San Jose, CA****AGENCY:** Minority Business  
Development Agency.**ACTION:** Notice.

**SUMMARY:** The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is \$276,250 in Federal funds and a minimum of \$48,750 in non-Federal contributions for the budget period February 1, 1989 to January 31, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the San Jose, California, geographic service area.

The I.D. Number for this project will be 09-10-89002-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a



standard rate of \$50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of \$500,000 or less and 35% of the total cost for firms with gross sales of over \$500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

**CLOSING DATE:** The closing date for applications is October 21, 1988. Applications must be postmarked on or before October 21, 1988.

**ADDRESS:** San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105, 415/974-9597.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105. September 13, 1988.

**FOR FURTHER INFORMATION CONTACT:** Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

**SUPPLEMENTARY INFORMATION:** Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development  
(Catalog of Federal Domestic Assistance)  
Xavier Mena,

Regional Director, San Francisco Regional  
Office.

August 25, 1988.

[FR Doc. 88-19805 Filed 8-30-88; 8:45 am]

BILLING CODE 3510-21-M

## National Oceanic and Atmospheric Administration

### Endangered and Threatened Wildlife and Plants; Identification of Marine Vertebrate and Invertebrate Candidate Species for Listing Under the Endangered Species Act

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of development of list of candidate species.

**SUMMARY:** NMFS identifies vertebrate and invertebrate marine species as candidates for possible addition to the List of Endangered and Threatened Wildlife and Plants. NMFS is soliciting information concerning the status of these species and nominations of additional species that appear to warrant listing consideration. This notice is not a proposal for listing and the involved species do not receive substantive or procedural protection under the Endangered Species Act of 1973. NMFS does, however, encourage Federal agencies and other appropriate parties to take these species into account in project planning. This candidate list identifies only animal species; NMFS will identify candidate marine plant species in a future notice.

**DATE:** Comments may be submitted until further notice.

**ADDRESS:** Comments should be sent to Dr. Nancy Foster, Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, Washington, DC 20235.

**FOR FURTHER INFORMATION CONTACT:** Patricia Montano, Protected Species Management Division, Office of Protected Resources and Habitat Programs, NMFS (202/673-5351).

**SUPPLEMENTARY INFORMATION:** The Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 et seq.) requires determinations of whether species of wildlife and plants are endangered or threatened based on the best available scientific and commercial data. "Species" includes any species or subspecies of fish, wildlife or plant, and any distinct population segment of any vertebrate species that interbreeds

when mature. NMFS and the U.S. Fish and Wildlife Service share responsibilities under the ESA. With some exceptions, NMFS is responsible for species that reside all or the major portion of their lifetime in marine waters. Candidate species are those species identified for listing consideration. NMFS will conduct comprehensive reviews of the status of each species to determine which warrant listing as endangered or threatened under the ESA. NMFS is also developing guidelines to be used to assign listing priorities to candidate species.

NMFS requests comments and solicits information concerning the status of species in the accompanying table, especially in regard to past and present population status and distribution; threats affecting the species; and, if appropriate, identification of critical habitat. NMFS solicits nominations of additional species that appear to warrant listing consideration; information on taxonomic changes for any of the listed species; and more appropriate common names.

NMFS intends to consider all data received in response to this notice, to make appropriate amendments to the accompanying table, and to indicate intentions with regard to future listing actions.

In the future, NMFS will compile and publish a list of candidate marine plant species. To ensure that the list is complete, NMFS is soliciting biological information and recommendations on candidate marine plants native to U.S. waters. Proposed candidates should be categorized as fully marine, fully aquatic estuarine, or inter-tidal estuarine.

In the following table of candidate species, the common name appears as the first entry followed by the scientific name, the family name, and the area of distribution under consideration for listing.

Date: August 26, 1988.

Nancy Foster,

Director, Office of Protected Resources and  
Habitat Programs, National Marine Fisheries  
Service.

### LIST OF CANDIDATE VERTEBRATE AND INVERTEBRATE MARINE SPECIES

Common name	Scientific name	Family	Area under construction
<b>Marine Mammals</b>			
Amazon River Dolphin <sup>1</sup> .....	<i>Inia geoffrensis</i> .....	Iniidae.....	South America.
Ganges River Dolphin <sup>1</sup> .....	<i>Platanista Gangetica</i> .....	Platanistidae.....	India, Bangladesh, Nepal, Bhutan.



## LIST OF CANDIDATE VERTEBRATE AND INVERTEBRATE MARINE SPECIES—Continued

Common name	Scientific name	Family	Area under construction
Indus River Dolphin <sup>1</sup>	<i>Plantanista minor</i>	.....do.....	Pakistan.
La Plata Dolphin <sup>1</sup>	<i>Pontoporia blainvilliei</i>	Pontoporiidae	Brazil, Uruguay, Argentina.
Bottlenose Dolphin <sup>2</sup>	<i>Tursiops truncatus</i>	Delphinidae	U.S. Mid-Atlantic (Coastal Stock).
Northern Bottlenose Whale	<i>Hyperoodon ampullatus</i>	Ziphiidae	North Atlantic.
Beluga Whale	<i>Delphinapterus leucas</i>	Monodontidae	AK (Cook Inlet population).
Juan Fernandez Fur Seal	<i>Arctocephalus philippii</i>	Otariidae	Chile.
Japanese Sea Lion	<i>Zalophus californianus japonicus</i>	.....do.....	Japan, North and South Korea.
Northern (Steller) Sea Lion <sup>3</sup>	<i>Eumetopias jubatus</i>	.....do.....	AK.
Northern Fur Seal <sup>3</sup>	<i>Callorhinus ursinus</i>	.....do.....	AK.
Saimaa Seal	<i>Phoca hispida saimensis</i>	Phocidae	Finland.
Kuril Seal	<i>Phoca vitulina stejnegeri</i>	.....do.....	USSR (Kuril Sea).
<b>Reptiles</b>			
Flatback Turtle	<i>Chelonia depressa</i>	Cheloniidae	Australia.
<b>Fishes</b>			
Gulf of Mexico Sturgeon <sup>4</sup>	<i>Acipenser oxyrinchus desotoi</i>	Acipenseridae	AL, FL, MS, LA.
Atlantic Sturgeon	<i>Acipenser oxyrinchus oxyrinchus</i>	.....do.....	North America—Atlantic Coastal Waters.
Largetooth Sawfish	<i>Pristas perotteti</i>	Pristidae	North and South America—Tropical and Sub-tropical Waters.
Smalltooth Sawfish	<i>Pristas pectinata</i>	.....do.....	Do.
<b>Mollusks</b>			
Southern Giant Clam	<i>Tridacna derasa</i>	Tridacnidae	Indo-Pacific.
Giant Clam	<i>Tridacna gigas</i>	.....do.....	Do.
Starlet Sea Anemone	<i>Nematostella vectensis</i>	Edwardsiidae	U.K. and North America.

<sup>1</sup> Status review under Endangered Species Act in progress (52 FR 13280, April 22, 1987).<sup>2</sup> Status review under Marine Mammal Protection Act in progress.<sup>3</sup> Status review under Marine Mammal Protection Act completed.<sup>4</sup> Currently identified by USFWS as a candidate species (50 FR 37960, September 18, 1985).

[FR Doc. 88-19816 Filed 8-30-88; 8:45 am]

BILLING CODE 3510-22-M

**Marine Mammals: Permit Modification;  
Hyatt Regency Waikoloa Resort (P407)****Modification No. 1 to Permit No. 625**

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), public display permit No. 625 issued to Hyatt Regency Waikoloa Resort, Waikoloa, Hawaii 96743, on February 2, 1988 (53 FR 5614, February 25, 1988) is modified by deleting Special Condition B.2., which disallowed a human/dolphin swim program, and by adding the following:

**Section D. Special Conditions on  
Human/Dolphin Swim Programs**

D. 1. The Permit Holder is authorized to use dolphins in an experimental human/dolphin swim program until December 31, 1989. The National Marine Fisheries Service (NMFS) may revoke this authority before December 31, 1989 if this program is found to have an adverse effect on the health or well-being of the

animals, if an ongoing review of public display permit authorities, procedures and criteria results in new regulations that disallow such programs, or if the terms of the following conditions are not being met.

D. 2. At least 45 days before beginning the authorized activities, the Permit Holder must identify the individual animals to be used in the program and submit: (a) a detailed description of the planned human/dolphin swim program, including (1) descriptions of the planned nature of the human/dolphin encounters and the anticipated maximum, minimum, and average frequency and duration of encounters per animal, per day, and per week, and (2) the content and planned methods for conducting the pre-encounter orientation and instructions for human swimmers regarding, among other things, any restrictions on physical contact with the dolphins and proper response in the event of aggressive dolphin behavior; (b) a detailed description of the facilities that will be used to house the dolphins and to conduct the human/dolphin swim program, and how the dolphins have been or will be trained to participate in the program; (c) curriculum vitae for the dolphin trainers, the attending veterinarian(s), and any other persons

responsible for handling, feeding or otherwise insuring the welfare of the animals; and (d) an assessment by the attending veterinarian of the current (baseline) health and behavior patterns of each animal and a description of the monitoring program that will be used to detect and determine the cause(s) and significance of any changes in the health or behavior of the dolphins as a result of the authorized activities.

D. 3. Human/dolphin swim operations must be continuously supervised by experienced trainers. An appropriately qualified and locally available veterinarian must be on call, but not necessarily present, during each human/dolphin encounter. The animals must be provided with adequate escape access from the swimming area should they choose to terminate the human/dolphin encounter and adequate security arrangements must be provided at all times to prevent harassment or injury to the dolphins. NMFS may inspect facilities and monitor swim operations.

D. 4. The Permit Holder must develop and implement a monitoring program to detect any changes in the health or behavior of the animals involved in the human/dolphin swim program. Animals that respond adversely to encounters with humans must be removed from the



program until such time as their health is restored and/or their behavior poses no risk to humans involved in the program. The program must be suspended immediately if the dolphins show signs of program/related health problems or undesirable behavioral modifications that are a result of the human/dolphin swim program.

- D. 5. The Permit Holder must advise NMFS immediately of any injuries to dolphins or humans resulting from the authorized activities, any program changes that might cause additional stress or otherwise have an adverse effect on the health or behavior of the dolphins involved in the program, and any removals or additions of animals to the program and the reasons for such removals or additions. In addition, the Permit Holder must submit quarterly reports describing the nature and extent of the program in the preceding quarter, any problems that may have developed, and steps taken to overcome such problems. Among other things, the quarterly progress report should provide: (a) summary statistics on (1) the number of people by age and sex that participated in the program during the reporting period and (2) the number of times, by day and week, that each dolphin participated in the program; (b) descriptions of any encounters that resulted in, or possibly could have resulted in, injury to a human or dolphin and any change made in the program to improve the safety, educational or other aspects of the program; and (c) a brief summary and assessment of the results of the required dolphin monitoring program. Reports must be submitted to the Director, Office of Protected Resources and Habitat Programs, NMFS, Washington, DC 20235. Failure to submit adequate and timely reports may result in revocation of the Permit Holder's authority to use dolphins in an experimental human/dolphin swim program.
- D. 6. By authorizing this experimental program, NMFS assumes no liability for physical or other injuries or harm to individuals participating in the experimental human/dolphin swim program. This fact must be reflected in any liability waivers or program instructions prepared by and for the Permit Holder.

Documents submitted in connection with the above modification are available for review in the Office of Protected Resources, National Marine Fisheries Service, Room 805, 1825 Connecticut Avenue NW., Washington, DC 20235.

Dated: August 19, 1988.

Nancy Foster,  
Director, Office of Protected Resources and  
Habitat Programs, National Marine Fisheries  
Service.

[FR Doc. 88-19852 Filed 8-30-88; 8:45 am]

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Extending Coverage of Export Visa and Exempt Certification Requirements for Silk Blend and Other Vegetable Fiber Apparel Exported from India

August 26 1988.

**AGENCY:** Committee for the  
Implementation of Textile Agreements  
(CITA).

**ACTION:** Issuing a directive to the  
Commissioner of Customs extending  
coverage of export visa and exempt  
certification requirements.

**EFFECTIVE DATE:** September 1, 1988.

**AUTHORITY:** Executive Order 11651 of  
March 3, 1972, as amended; Section 204 of the  
Agricultural Act of 1956, as amended (7  
U.S.C. 1854)

**FOR FURTHER INFORMATION CONTACT:**  
Jennifer Tallarico, International Trade  
Specialist, Office of Textiles and  
Apparel, U.S. Department of Commerce,  
(202) 377-4212.

**SUPPLEMENTARY INFORMATION:** The  
existing visa and exempt requirements  
are being extended to cover certain silk  
blend and other vegetable fiber apparel  
exported from India on and after  
January 1, 1988.

A copy of the current bilateral textile  
agreement between the Governments of  
the United States and India is available  
from the Textiles Division, Economic  
Bureau, U.S. Department of State, (202)  
647-1998.

A description of the textile categories  
in terms of T.S.U.S.A. numbers is  
available in the **CORRELATION: Textile  
and Apparel Categories with Tariff  
Schedules of the United States**  
Annotated (see **Federal Register** notice  
52 FR 47745, published on December 16,  
1987). Also see 44 FR 68504, published  
on November 29, 1979.

James H. Babb,  
Chairman, Committee for the Implementation  
of Textile Agreements.

Commissioner of Customs,  
Department of the Treasury,  
Washington, DC 20229

Dear Mr. Commissioner: This directive  
amends, but does not cancel, the directive  
issued to you on November 27, 1979, as  
amended, by the Chairman, Committee for  
the Implementation of Textile Agreements.  
You were directed to prohibit entry and  
withdrawal from warehouse for consumption  
in the United States of certain cotton, wool  
and man-made fiber textile products,  
produced or manufactured in India for which  
the Government of India has not issued an  
appropriate export visa or exempt  
certification.

Effective on September 1, 1988, the  
directive of November 27, 1979 is amended  
further to require that silk blend and other  
non-cotton vegetable fiber apparel produced  
or manufactured in India in Categories 831-  
859 also be visaed if exported from India on  
and after January 1, 1988.

Shipments entered or withdrawn from  
warehouse on or after September 1, 1988 and  
exported on and after January 1, 1988 which  
are not accompanied by an appropriate  
export visa shall be denied entry and a visa  
waiver must be obtained.

The Committee for the Implementation of  
Textile Agreements has determined that  
these actions fall within the foreign affairs  
exception to the rulemaking provisions of 5  
U.S.C. 553(a)(1).

Sincerely,

James H. Babb,  
Chairman, Committee for the Implementation  
of Textile Agreements.

[FR Doc. 88-19853 Filed 8-30-88; 8:45 am]

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## DEPARTMENT OF ENERGY

### Compliance With the National Environmental Policy Act: Record of Decision for Remedial Actions at the Former Climax Uranium Company Uranium Mill Site, Grand Junction, CO

**AGENCY:** Department of Energy.

**ACTION:** Decision to relocate the residual  
radioactive materials from the former  
Climax Uranium Company uranium mill  
site for long-term stabilization and  
control at the Cheney Reservoir site,  
southeast of Grand Junction, Colorado.  
The mode of tailings transportation  
(truck or truck/train combination) will  
be determined by a competitive bidding  
process.

**SUMMARY:** Pursuant to the Council on  
Environmental Quality Regulations (40  
CFR Part 1505) implementing the  
procedural provisions of the National  
Environmental Policy Act (NEPA) and  
the U.S. Department of Energy (DOE)  
guidelines for compliance with the  
NEPA (52 FR 47662, December 15, 1987),  
the Office of the Assistant Secretary for  
Nuclear Energy of the DOE is issuing a  
Record of Decision on remedial actions  
at the former Climax Uranium Company  
uranium mill site at Grand Junction,  
Colorado. The Final Environmental  
Impact Statement, Remedial Actions at  
the Former Climax Uranium Company  
Uranium Mill Site, Grand Junction, Mesa  
County, Colorado, (DOE-EIS 126-F), was  
issued in December, 1986. Since that  
time, new information has been  
collected on tailings transport by slurry  
pipeline, the potential economic impacts  
of the proposed action, and the ability of  
the proposed action to comply with



proposed U.S. Environmental Protection Agency (EPA) groundwater protection standards. In addition, the location of the disposal cell and volumes of contaminated, borrow, and restoration materials have changed. As a result of the new information and potentially significant changes to the proposed action, an analysis was prepared to determine whether to supplement the Environmental Impact Statement (EIS). The analysis indicated that the proposed changes were not relevant to environmental concerns and that the new information would have little bearing on the proposed action or its impacts.

### Background

On November 8, 1978, the Uranium Mill Tailings Radiation Control Act (UMTRCA), Pub. L. 95-604, as amended, was enacted in order to address a Congressional finding that uranium mill tailings located at inactive processing sites may pose a potential health hazard to the public. On November 8, 1979, the DOE designated 24 inactive processing sites for remedial action under Title I of the UMTRCA, including the former Climax Uranium Company Uranium Mill site (hereinafter the Grand Junction Site) in Grand Junction, Colorado (44 FR 74892).

Pursuant to the UMTRCA, the DOE and the state of Colorado entered into a cooperative agreement effective October 19, 1981, for remedial action at the Grand Junction site and at eight other inactive uranium mill sites in Colorado. Under this cooperative agreement, the state and the Nuclear Regulatory Commission (NRC) must concur with the remedial action plan developed by the DOE for relocation to the Cheney Reservoir site, and the DOE and the state will cost-share the remedial action. Under the cost-sharing provisions, the DOE will pay 90 percent and the state 10 percent of the tailings and/or site acquisition, engineering, and construction costs.

Also, the UMTRCA requires the U.S. Environmental Protection Agency (EPA) to promulgate remedial action standards for inactive uranium mill sites. The purpose of these standards is to protect the public health and safety and the environment from radiological and nonradiological hazards associated with residual radioactive materials at the sites. The final standards (40 CFR Part 192) were promulgated with an effective date of March 7, 1983. However, on September 3, 1985, the U.S. Tenth Circuit Court of Appeals set aside parts of the final EPA standards concerning groundwater protection, 40 CFR Part 192.20(a) (2) and (3) (see American

Mining Congress V. Thomas 772 F. 2d 617, Tenth Circuit Court, 1985). The groundwater protection standards were remanded to the EPA for further consideration in light of the Court's opinion that the groundwater standards promulgated by the EPA on March 7, 1983, were site-specific rather than of general application as required by the UMTRCA. The EPA issued proposed groundwater protection standards for comment on September 24, 1987.

Section 108(a)(3) of the UMTRCA provides that if the EPA has not promulgated final standards by October 31, 1982, remedial actions taken by the DOE shall comply with the proposed standards until such time as the standards are promulgated in final form. This section also applies to the proposed groundwater protection standards. The DOE intends to comply with the provisions of Subparts A and C of the proposed groundwater protection standard (40 CFR 192.21) immediately. When the EPA groundwater protection standards are finalized, the DOE will reevaluate its groundwater protection plan and undertake such action as is necessary to ensure that the requirements of Subpart B, which addresses aquifer restoration, are met. The need for aquifer restoration at the Grand Junction site will be evaluated after the tailings have been relocated and stabilized. The need for and extent of aquifer restoration will be evaluated in a separate NEPA document.

### Project Description

The Grand Junction site is a 104-acre property adjacent to the south side of the city of Grand Junction, Colorado, and adjacent to the north side of the Colorado River. The Grand Junction site consists of the tailings area, mill site, and effluent ponds from the former mill site, which was operated by the Climax Uranium Company between 1951 and 1970.

The Grand Junction site contains an estimated 4.06 million cubic yards of uranium mill tailings in the form of finely-ground sand, slimes, and contaminated soils. The tailings are covered with approximately 6 inches of soil and sparse vegetation. Concrete and brick from the demolished mill buildings were placed as riprap along the north bank of the Colorado River.

The State of Colorado presently uses a portion of the site, the State Repository, for temporary storage of contaminated materials obtained from remedial action at vicinity properties in the Grand Junction area. Vicinity properties are homes, businesses, public buildings, and vacant lots that may have been contaminated during construction

by the use of tailings as a building material or as fill material before the hazards associated with this material were known. The use of the tailings for these purposes is no longer allowed.

Remedial action is being performed at vicinity properties under the state-operated Grand Junction Remedial Action Program (GJRAP) and the DOE-operated Uranium Mill Tailings Remedial Action (UMTRA) Project. Approximately 4009 properties in Mesa County are estimated to have levels of radiation in excess of EPA standards and will be formally included on the vicinity property list. It is estimated that 3937 properties will be remediated; 1482 properties were remediated as of February 28, 1988. Of the remaining 2455 properties, it is estimated that 72 will not be remediated due to refusals by owners to participate in the project. Any additional vicinity properties identified prior to closure of the disposal cell will also be remediated. Survey work is scheduled to be completed by September of 1990. Vicinity property estimates are subject to ongoing revision. The differences in the number of vicinity property estimates in the Grand Junction Environmental Impact Statement (EIS) and this Record of Decision are not significant.

The Cheney Reservoir site, the selected disposal site, is approximately 18 miles southeast of the Grand Junction site and 5 miles southeast of the community of Whitewater. The Cheney Reservoir site lies between Grand Mesa and the Gunnison River and is approximately 2 miles east of U.S. Highway 50. The Cheney Reservoir site is named for the closest geographic feature of distinction, Cheney Reservoir, 1.5 miles southeast of the disposal site.

The Cheney Reservoir site is used primarily for low-density grazing although there is an existing oil and gas lease on the site. The terrain is very flat and the area is sparsely covered with grasses and shrubs. The area north of the site, along Kannah Creek, is intensely farmed. Privately owned land lies to the north, west, and south of the site.

The Cheney Reservoir site, which is on land administered by the Bureau of Land Management (BLM), will be permanently withdrawn from public use. The BLM published a notice of proposed withdrawal (49 FR 30801) for the Cheney Reservoir site in 1984, which proposed to withdraw an area of about 360 acres in Township 3 South, Range 2 East, sections 11, 12, 13, and 14 (Figure 1). Although the stabilized tailings pile will only cover about 80 acres, adjacent lands are required for stockpiling of



materials, equipment, water retention basins, and other construction-related activities. During the development of the conceptual design, the area immediately adjacent (south) to the proposed withdrawal area was selected as the ultimate disposal area. The DOE has subsequently amended the withdrawal application to decrease the area required in sections 11 and 12 and to

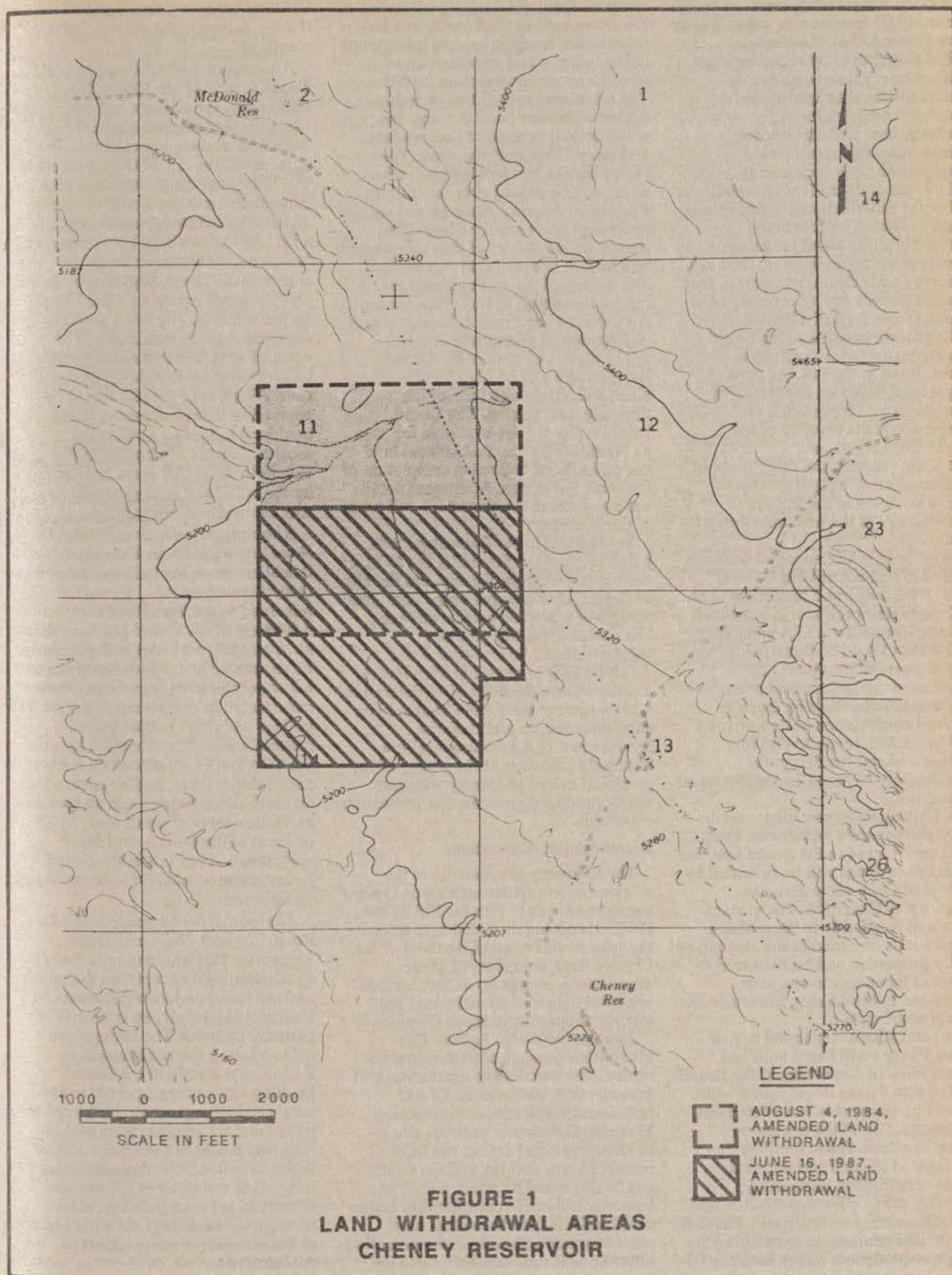
increase the area required in sections 13 and 14; the total amended withdrawal area will encompass about 340 acres (Figure 1).

Although the amended area of withdrawal represents a modification from the area discussed in the EIS, the analyses in the EIS are applicable to the amended area for several reasons:

- The site characterization activities (e.g., test pits, monitoring wells, radiological surveys, seismic analysis, and flora and fauna surveys) for many environmental components were representative of the general area rather than restricted to the limits of the original withdrawal area.

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- Impacts analyses for most environmental components are primarily affected by volumes of materials handled rather than by minor location modifications. These components include radiation; air quality; noise; population and work force; housing, social structure, and community services; economic structures; transportation networks; energy, water, and fuel use; and accident probabilities.

- For the environmental components typically affected by location modifications (flora and fauna, soils and mineral resources, hydrology, land use, and scenic and cultural resources), the impacts analyses are representative of the area rather than of a limited, site-specific nature because of the broad characterization of the activities.

- As stated in the EIS, the impacts analyses are based on conservative assumptions and represent a reasonable upper limit on the severity of the impacts that may occur.

For these reasons, the description of the affected environment and the impacts analyses of the EIS are representative of the amended area of withdrawal.

The purpose of the remedial action is to stabilize and control the residual wastes from the Grand Junction site at the Cheney Reservoir site in a manner that complies with the EPA standards (40 CFR Part 192). The principal feature of the selected alternative is the relocation of the tailings and other contaminated materials by truck or truck/rail combination (Alternatives 3 and 4 in the EIS, respectively) for isolation and stabilization in the approximately 80-acre Cheney Reservoir disposal cell.

The Cheney Reservoir disposal site will be permanently withdrawn from public use. Access to the Grand Junction site and the tailings will be provided by the State of Colorado pursuant to section 104 of UMTRCA. The current owner will retain title to the mill site. The materials obtained in the cleanup of vicinity properties will be delivered to the Grand Junction site and later transported to the Cheney Reservoir site for final stabilization.

Remedial action is planned in two phases. Phase I will begin with site preparation and demolition at the Grand Junction Site. Phase II will follow with excavation, transportation, placement, and construction of the necessary support facilities. Phase I will be performed at the mill site and will include construction of: fencing, temporary roads, drainage ditches, and the wastewater retention basin. Phase II construction consists of: excavating the tailings embankment and processing the

cover material at Cheney; installation of the slurry wall at the Climax Site for dewatering, loading/hauling/placement of the tailings; and construction of miscellaneous construction facilities. The construction facilities include decontamination pads, fencing, the water retention pond at Cheney Site, and so on to support the work. The radon barrier and erosion protection cover will be placed over the tailings. Excavated disposal site material will be processed and used for cover. The maximum sideslopes of the embankment will be five horizontal to one vertical, and the top of the embankment will have a maximum slope of four percent. An unpaved road from U.S. Highway 50 will remain as permanent access.

The disturbed area at the Grand Junction site will be backfilled with clean soil, contoured for surface drainage, and seeded. The Grand Junction site will be available for uses as permitted by applicable local land use ordinances, following completion of the remedial action. Additional details are available in Sections 3.2.4 and 3.2.5 of the Final EIS.

Subsequent to the December, 1986, publication of the Final EIS, the DOE, at the request of Mesa County and the city of Grand Junction, conducted additional studies of projected socioeconomic impacts and a slurry pipeline transportation. An Environmental Analysis was prepared in May 1988 to examine these studies and to determine whether or not the Final EIS should be supplemented. In addition, the Environmental Analysis contains a detailed evaluation of the ability of the proposed action to comply with the newly proposed groundwater protection standards.

#### Description of Alternatives

The following alternatives to the selected action (Alternative 3 or 4) were considered in detail in the EIS by the DOE in reaching its decision to relocate the wastes and to stabilize them at the Cheney Reservoir site. All of the alternatives, except no action, include remedial action at an estimated 3937 vicinity properties in Mesa County.

**Alternative 1—No Action:** This alternative consists of performing no remedial action. Radon emanation and gamma radiation from the Grand Junction site will continue to exceed EPA standards on or near the site. Without remedial action, the DOE cannot ensure that the tailings would not be dispersed by wind, water, or humans, and cause considerably higher health effects than those that may presently exist. Therefore, the no action alternative is unacceptable since the

UMTRCA requires that the DOE ensure the site is in compliance with EPA standards.

**Alternative 2—Stabilization at the Grand Junction Site:** Under this alternative, the tailings and other contaminated materials would be stabilized at their present location adjacent to the city of Grand Junction. The tailings and contaminated alluvium beneath the tailings would be excavated and stockpiled. A subbase consisting of a fill layer, a capillary break layer, and a low-permeability layer would be constructed. The tailings and other contaminated materials would be placed on the subbase. The tailings and contaminated materials would be covered with an earth radon barrier and an erosion protection layer of small rock. All sides of the pile would be covered with rock armoring (large boulders) to protect against the erosional forces of flooding in the Colorado River. All areas not occupied by the stabilized tailings would be recontoured and revegetated.

**Alternative 5—Disposal at the Two Road Site with Truck Transport:** Under this alternative, the tailings and of the contaminated material would be relocated to the Two Road site 33 miles northwest of the Grand Junction site. A pit, averaging nine feet in depth, would be excavated at the Two Road site and a low-permeability layer would be constructed in the bottom of the pit. The tailings and other contaminated materials would be relocated by truck to the Two Road site, placed on the low-permeability layer, and be covered with an earth radon barrier and an erosion protection layer of small rock. After removal of the tailings and other contaminated materials, the Grand Junction site would be recontoured and revegetated.

**Alternative 6—Disposal at the Two Road Site with Train and Truck Transport:** This alternative is the same as Alternative 5 except that the tailings and contaminated material would be transported partially by train and partially by truck. The tailings and contaminated materials would be loaded onto a train at the Grand Junction site and transported to Mack, where the tailings would be loaded onto trucks and transported west on U.S. Highway 6 & 50 to Two Road and north to the Two Road site approximately 3.4 miles. One trainload of tailings and contaminated materials would be transported each day. All other aspects of the alternative are identical to Alternative 5.



### Comments Received

Comments on the Final EIS were received from 95 individuals, various local businesses, the Mesa County Health Department, the Mesa County Commissioners, Mesa County Planning Commission, local agencies, elected officials, the state of Colorado, and the U.S. Department of Interior (DOI). Comments from the majority of the commentors focused on the selection of the disposal site (preference for Two Road), the mode of transportation (preference for truck/rail), the route for truck transportation, costs, and requests for an extension to allow for additional input prior to the issuance of this Record of Decision. These issues are responded to in summary form below. All comments will be addressed specifically during the final design process, through consultation with the state of Colorado and the DOI.

- Preference for the Two Road site—As discussed in greater detail below, the Cheney Reservoir site is selected for disposal of the tailings and other wastes due to environmental considerations. The Cheney Reservoir site would cause fewer impacts to threatened and endangered species and would result in fewer transportation-related accidents.

- Preference for truck/train transport—Although the analyses in the EIS indicate that truck/train transport is considerably more expensive than truck transport, the DOE acknowledges that

these cost estimates may vary substantially when construction contractors have an opportunity to submit price quotations. In addition, the potential for accidents is slightly less for the truck/train option than for the truck option.

- The U.S. Senate Appropriations Committee, in its 1988 report, calls on the DOE to "take into consideration the impacts of the method of transportation selected, including, but not limited to, the negative economic impact on the community, the adverse transportation impacts caused by haul route traffic on arterial roads and highways including traffic safety; and the projected damage to streets and highways along the haul route" in considering the alternatives for disposal of the uranium mill tailings at Grand Junction, Colorado. The DOE, with the input of community representatives, has conducted such a socioeconomic impact/benefit study.

The DOE's Remedial Action Contractor (RAC) will specify the measures that must be taken by the contractor conducting the remedial action to mitigate adverse impacts related to the transportation options.

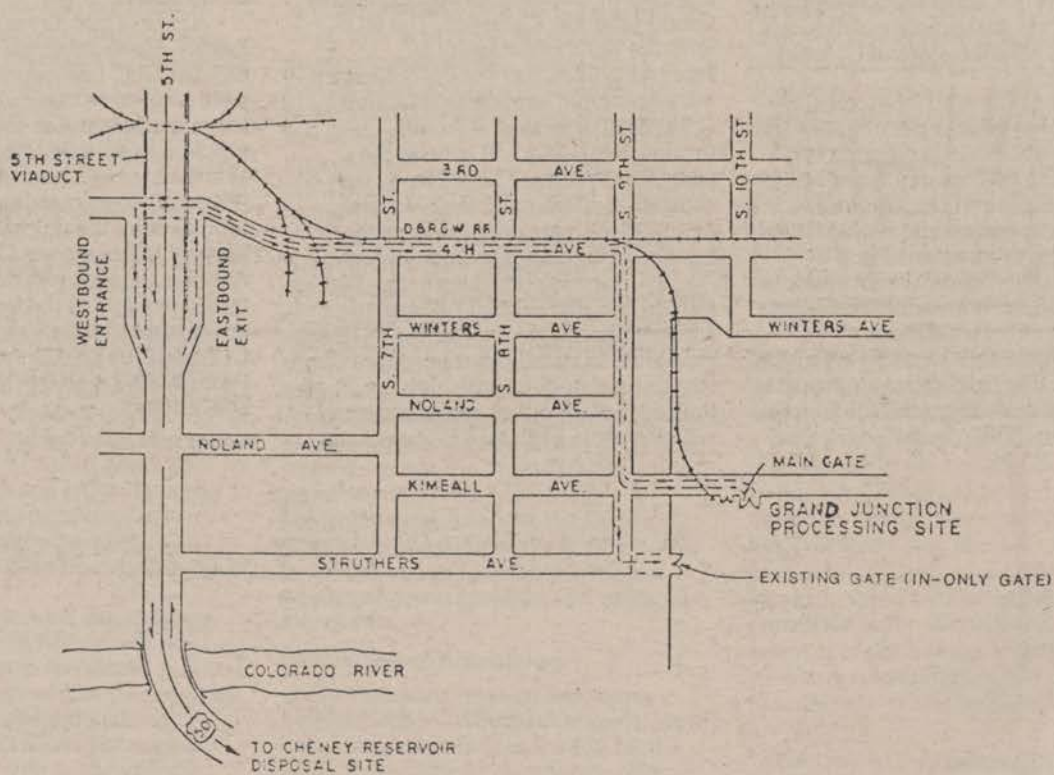
- Truck transportation route—Since publication of the Final EIS and in support of a design option, the DOE has evaluated in detail other proposed inner city transportation route options. These options have in turn been addressed with the state of Colorado Department

of Highways, the local task force, city and county agencies, the local Development Authority, the Chamber of Commerce, and a majority of potentially affected citizens. In the event that the contractor selected by the RAC uses truck transportation, trucks will exit from the northwest corner of the site onto 9th Street, turn west (left) onto 4th Avenue, and then travel southbound onto U.S. Highway 50 to the Cheney Reservoir site (Figure 2). This route was selected to minimize use of local streets, provide safe ingress and egress from the roads, and to avoid residential areas. The actions necessary to mitigate adverse traffic impacts are discussed below under CONSIDERATIONS IN THE IMPLEMENTATION OF THE DECISION.

- Truck/Train Transportation Route—Since publication of the Final EIS, the DOE has established a truck/train transportation route. Trains will leave the processing site in Grand Junction to an unloading facility south of Whitewater using existing rail lines (Figure 3). Trucks will transport the tailings from the unloading facility to Cheney Reservoir via U.S. Highway 50. Actions necessary to mitigate adverse traffic impacts of the truck/train option are discussed below under CONSIDERATIONS IN THE IMPLEMENTATION OF THE DECISION.

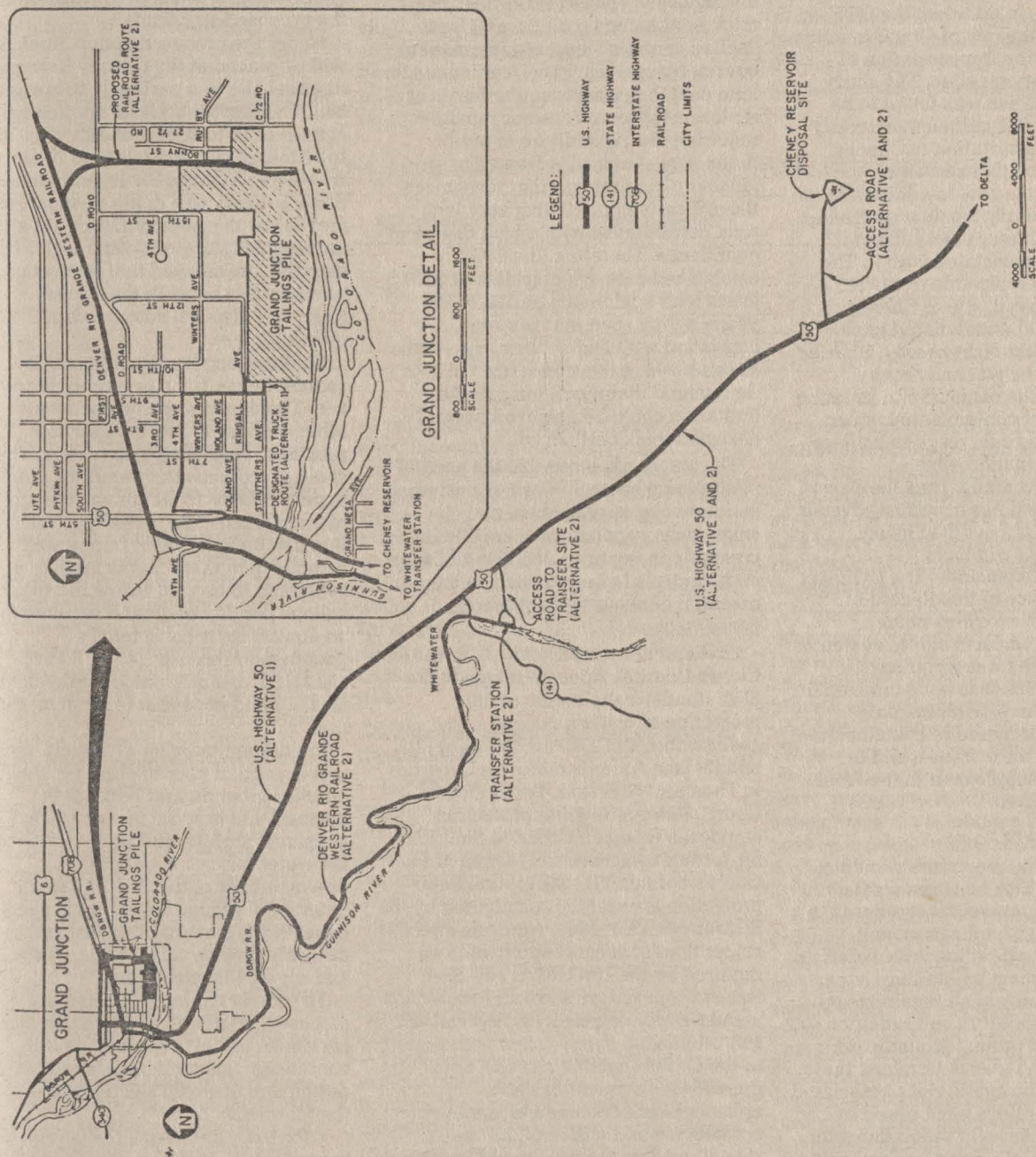
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**FIGURE 2**  
**ALL TRUCK TRANSPORTATION ROUTE**





**FIGURE 3**  
**TRUCK/TRAIN TRANSPORTATION ROUTE**



• **Cost estimates**—Since completion of the Final EIS, additional cost estimates for various truck and truck/train transport options have been prepared by the DOE and presented to the public. These estimates indicate that the truck/train option remains substantially more costly (as much as \$12 million) than truck only transportation. In addition, the DOE, at the request of the city of Grand Junction, has evaluated the transportation of tailings by slurry pipeline. The slurry pipeline alternative was found to be approximately \$42 million more costly than truck transportation to Cheney Reservoir alternative and was subsequently rejected. In addition to its high cost, the slurry pipeline option has a number of adverse environmental consequences associated with it. The construction of a pipeline from the Grand Junction mill site to Cheney Reservoir would entail disturbance along the pipeline right-of-way. Slurried tailings would be wet and require dewatering at the disposal site, creating a new source of contaminated water. Pipeline failure could result in spillage of wet tailings in otherwise uncontaminated areas. Thus the slurry pipeline proposal has a greater adverse environmental impact than using existing roads or rail lines.

• **Schedule Extension**—The DOE has deferred issuance of this Record of Decision in order to re-examine socioeconomic impacts and to evaluate a slurry pipeline transportation alternative, which was not examined in the Final EIS. An Environmental Analysis was prepared to examine the significance of these issues, and to determine if a supplement to the Final EIS was warranted.

#### Basis for Decision

Pursuant to the requirements of the UMTRCA, the EPA has promulgated health and environmental standards to govern cleanup, stabilization, and control of residual radioactive materials at inactive uranium mill tailings sites. The standards establish requirements for long term stability, limit radiation emanation, and protect groundwater quality. The EPA also determined that significant public health risks associated with inactive tailings were posed by prolonged exposure (to radon daughter products) to people living and working in structures contaminated by relocated mill tailings. As a result of these conclusions, prevention of misuse and dispersion of tailings is an important objective of the EPA standards. Accordingly, long-term stability was emphasized in the development and promulgation of the standards. This is

consistent with the guidance provided by the legislative history of the UMTRCA, which stresses the importance of avoiding remedial action that would be effective for only a short period of time and that would require future Congressional consideration.

The EPA standard-setting process distinguished "passive controls" (e.g., thick earthen and rock covers) from "active controls" (e.g., semipermanent covers, fences, signs and restrictions on land use) that would require frequent replacement or other major repairs requiring the expenditure of public funds. The standard is framed as a longevity requirement that recognizes the difficulty in predicting very long-term performance with a high degree of confidence. Therefore, the EPA established a design objective of 1000 years with a minimum period of 200 years, a time span that is more consistent with engineering experience. In establishing the standards, the EPA determined that the radon emission limitation could be achieved by well-designed thick earthen covers.

The standards recognize the need of institutional controls, such as custodial maintenance, surveillance, and emergency response measures. In its preamble to the rules, the EPA calls for such controls to be provided as an essential back-up to the primary, passive controls.

On September 3, 1985, the U.S. Tenth Circuit Court of Appeals set aside the EPA standard applicable to the protection of waterways and groundwater, 40 CFR Part 192.20(a) (2) and (3) (see *American Mining Congress v. Thomas*, 772 F. 2nd, Tenth Circuit Court). The groundwater protection standards were remanded to the EPA for further consideration in light of the Court's opinion that the groundwater protection standards promulgated by the EPA on March 7, 1983, were site-specific rather than of general application as required by the UMTRCA. The EPA issued proposed groundwater protection standards for comment on September 24, 1987. Remedial action taken with regard to the Grand Junction site will not preclude subsequent design enhancements if needed to achieve compliance and will not limit the selection of reasonable groundwater restoration methods that may be necessary when final standards are promulgated. When the final EPA standards are promulgated, the DOE will evaluate groundwater protection requirements and undertake such action as is necessary to ensure that the final standards are met. The need for and

extent of aquifer restoration will be evaluated in a separate NEPA process.

The DOE has characterized the Cheney Reservoir site to determine whether the proposed conceptual design would be in compliance. The studies indicate that the proposed conceptual design will not result in any substantive environmental impacts in violation of the proposed standards.

Under the proposed action, tailings will be placed at the Cheney Reservoir disposal site in a partially below-grade cell. The disposal cell foundation will consist of 10 to 20 feet of silty clay, zero to 10 feet of silty gravel, 10 to 20 feet of weathered Mancos Shale, and Mancos Shale bedrock to a depth of about 780 feet below the surface. Drilling of a 1760-foot deep exploratory water well at the disposal site showed that there is no groundwater beneath the Cheney Reservoir disposal site to a depth of at least 1521 feet.

Shallow, perched groundwater is present beneath the proposed disposal site. The depth of the perched water table is about 15 feet beneath the proposed base of the excavation. The shallow groundwater saturates a zone of approximately 10 feet of weathered Mancos Shale. The quantity of water that can be withdrawn from a well completed in this shallow aquifer is estimated to be well below the 150 gallons per day or greater required for an aquifer to be considered a groundwater resource (40 CFR Part 192.21(g)), meaning the groundwater is class III and not suitable for domestic use.

In addition to being extremely slow moving and of poor quality, the shallow, perched groundwater beneath the disposal site is spotty in occurrence, and a discreet surface discharge location for the water has not been located downgradient of the site. The small quantity of groundwater that is perched beneath the site probably discharges diffusely downgradient and into the underlying Mancos Shale.

To protect groundwater at the site, the disposal cell design and location make maximum use of favorable natural conditions. Some of these favorable design and disposal site features include the following:

- Partially below-grade disposal of the tailings to limit the exposed area of the pile.
- A low hydraulic conductivity radon barrier to limit infiltration through the tailings.
- Abundant, naturally occurring, minerals in the foundation soils that will reduce or remove contaminants from the tailings leachate.



An absence of groundwater resources for at least 1760 feet below and peripheral to the disposal site.

Five constituents, arsenic (As), molybdenum (Mo), selenium (Se), uranium (U), and gross alpha activity, are expected to exceed the proposed EPA Maximum Concentration Limits (MCLs) at the edge of the disposal cell. Concentrations of these constituents are anticipated to be below the MCLs less than 5000 feet downgradient from the edge of the disposal cell. The remaining constituents are predicted to have

concentrations less than the EPA MCLs at the edge of the disposal cell.

Supplemental standards will be requested for the Cheney Reservoir Site because the aquifer contains Class III groundwater. Class III groundwater is not a potential source of drinking water and is of limited beneficial use.

At the Cheney Reservoir site, the shallow aquifer would yield less than 150 gallons per day to a water well because of the very limited saturated thickness, limited areal extent, and relatively low permeability of the

aquifer. A Class III designation is further justified by the fact that background water quality of the aquifer is not suitable for drinking water since background concentrations of selenium and gross alpha activity, at some locations, exceed EPA National Primary Drinking Water Quality Standards. Table 1 shows the EPA MCL's, background concentrations, and proposed supplemental standards for the five constituents of concern.

TABLE 1.—PROPOSED SUPPLEMENTAL STANDARDS FOR THE CHENEY RESERVOIR DISPOSAL SITE

Constituent	MCLs (mg/l)	Background (mg/l)	Proposed supplemental standards (mg/l)	* Distance to meet MCL (ft)
AS.....	0.05.....	0.005.....	0.10.....	<5000
Mo.....	0.1.....	0.043.....	0.20.....	<5000
Se.....	0.01.....	0.01.....	0.25.....	<5000
U.....	0.044.....	0.017.....	0.066.....	<5000
Gross alpha activity.....	15 pCi/l.....	13.9 pCi/l.....	26 pCi/l.....	<5000

Given these desirable natural and design features, the proposed remedial action will comply with the EPA proposed groundwater standards at the Cheney Reservoir site.

Although EPA standards would also be met at the Two Roads disposal site, it is believed that relocation of the tailings to the Cheney Reservoir site would result in fewer potential impacts. Negative impacts to threatened and endangered species and the number of traffic accidents are expected to be higher at the Two Roads site. Therefore, relocation of tailings to the Cheney Reservoir site is considered the preferable alternative.

In comparison to relocation to the Cheney Reservoir site and as noted in the EIS, the no action alternative is unacceptable since, without remedial action, the DOE cannot ensure that the tailings would not continue to be dispersed by wind, water, or man. Radiation levels at and nearby the Grand Junction site also would continue to exceed the EPA standards and contamination of the environment would continue.

In comparing relocation to the Cheney Reservoir site with stabilization on site, the EIS indicates that relocation would result in an increase in short-term (i.e., during remedial action) environmental impacts beyond those identified for stabilization on the Grand Junction site. These impacts include health effects to the remedial action worker, particulate and combustion emissions, and vehicular traffic injuries.

However, also as indicated in the EIS, relocation will provide long-term

environmental benefits in a cost-effective manner and assure total compliance with the EPA standards. For example, health effects over 1000 years will be much lower if tailings are disposed of at the Cheney Reservoir site compared to the no action alternative. In addition, the Grand Junction tailings are within the floodplain of the Colorado River; stabilization on site may require additional long-term site maintenance because of the tailings' proximity to the river.

#### Considerations in the Implementation of the Decision

The DOE is aware of the many concerns that have been expressed about the environmental and health impacts from the remedial action. In implementing its decision, the DOE will comply with applicable Federal regulations to avoid or minimize health and environmental impacts. The following monitoring and mitigation measures will be employed to avoid or minimize impacts during the remedial action:

**Transportation**—If truck transport is selected through a competitive bidding process, the selected transport route described above (9th Street to 4th Avenue to U.S. Highway 50) will include a variety of safety mitigative measures to minimize undue traffic congestion, damage to road surfaces, and accidents and injuries. These measures include city street upgrades, air quality monitoring, construction of on/off ramps at key locations, implementation of noise management measures, establishment of specified intervals

between trucks, relocation of the food distribution center, routine truck inspections, placement of additional traffic signs, regular safety training sessions for truck drivers formal emergency response procedures, and the restriction of hauling activities to daylight hours.

If the truck/train option is selected, other mitigative measures will be implemented including training classes, establishment of emergency response procedures, rail upgrades, highway widening to channel traffic at Whitewater and Cheney Reservoir, air quality monitoring, implementation of noise management procedures, routine safety inspections, and for the truck portion, hauling will be restricted to daylight hours with minimum specified intervals between trucks.

**Radiation release**—The release of contaminated particulates will be reduced by dampening contaminated materials with water and/or dust suppressants, by stopping contaminated material-handling operations during adverse weather conditions, and by using trucks or railcars with tight-fitting seals, covers and/or chemical surfactants. Both processing and disposal sites will be shut down during the winter months.

The inadvertent off-site transportation of radioactively contaminated material will be prevented by the use of decontamination facilities (e.g., truck and/or railcar wash stations) to clean vehicles before leaving the sites. On the Grand Junction site, waste-water streams will be monitored and treated



as necessary to meet permit requirements before off-site disposal; disturbed areas (Grand Junction and Cheney Reservoir sites) will be isolated from surface-water systems by erosion control methods.

Human exposure to residual radioactive materials will be reduced by restricting access, and by providing the monitoring and protective equipment and training programs necessary for use by remedial action workers. An extensive environmental monitoring program will be implemented during remedial action to monitor radon and particulates in air.

Air emissions—Construction areas and roads will be sprayed as required during the remedial action period with water and/or a dust suppressant. Contaminated material will be transported in covered vehicles. Tailings will not be transported, spread, or otherwise disrupted during adverse weather conditions in compliance with applicable regulations.

Water contamination—To minimize impact during a flood the excavation will be performed to minimize the exposure of contaminated material to surface water by the installation of protective dikes to isolate the material from surface-water systems. The construction of retention basins will permit the excavated area to be dewatered and will allow collection and evaporation of waste water resulting from washing vehicles and equipment. All effluent water will be monitored and evaporated or treated before release. The sediment from the retention basins will be buried in the disposal cell at the Cheney Reservoir site.

Water use—Sufficient water for use at the Cheney Reservoir site will not be available from an on-site well(s). Preliminary discharge test results from the exploratory production well indicate that 18 gallons per minute may be produced from the Entrada and Wingate Sandstone at a depth of 1521 to 1760 feet below land surface. The method of obtaining water for construction at the Cheney Reservoir site is a design decision that will be made by the Remedial Action Subcontractor. Water may be trucked to the site from a commercial water source or piped to the site from the nearby public water supply pipeline. Since the impacts analyses are conservative and represent a reasonable upper limit of their severity, additional water truck trips are within the range of impacts predicted in the EIS. Assuming that 50 percent of the water needs (36,274,000 gallons) would be delivered from Grand Junction to the Cheney Reservoir site (36 miles round trip) by water trucks (4000-gallon capacity), the

total miles travelled (326,466 miles) is only 3.4 percent of the total vehicle miles travelled as estimated in the EIS. Since a commercial water source is available in Whitewater (14 miles round trip), it is clear that the analyses of the EIS are representative of the "all-water-truck scenario."

Cultural resources—As noted in the EIS, four lithic scatters that require additional data to determine their eligibility to the National Register of Historic Places (NRHP) are present in the former withdrawal area. In addition, portions of the amended withdrawal area and the access road have not yet been surveyed for cultural resources. Therefore, prior to remedial action, a Class III survey and additional testing of the lithic scatters will be conducted. If the resources are determined to be eligible to the NRHP and would be affected by the remedial action, a data recovery plan will be designed and implemented in consultation with the State Historic Preservation Office and the BLM.

Threatened and endangered species—Pursuant to section 7 of the Endangered Species Act and as indicated in the EIS, the DOE has prepared biological assessments for remedial actions at the Cheney Reservoir and Grand Junction sites. The U.S. Fish and Wildlife Service (USFWS) has issued a final biological opinion. Based on the analyses in the EIS and through consultation with the USFWS, the remaining issues of concern are the low potential that the black-footed ferret occurs on the Cheney Reservoir site and potential impacts to the Colorado squawfish. In response to these concerns, the DOE established an interagency agreement with the USFWS to conduct spotlight surveys during the summer of 1987, prior to remedial action, to ascertain the presence of the ferret. The surveys found no ferrets in the area of interest. In addition, the DOE will not work in the Colorado River from July 1 through September 30, and will avoid use of Colorado River water at the Grand Junction site.

Floodplains/wetlands—As shown in the floodplain and wetland assessment, limited remedial actions would take place within the 100-year floodplain of the Colorado River and in the wetlands along the river. Pursuant to Executive Orders 11988 and 11990, and 10 CFR Part 1022, the DOE published a Statement of Findings in the final EIS (Appendix G). Remedial actions will be conducted in compliance with applicable permits and will incorporate mitigative measures to reduce impacts, including excavation during low flow, rapid initiation of revegetation efforts,

use of sediment control techniques, and others.

Details of the monitoring plans and mitigative measures specified above will be contained in several documents scheduled to be prepared prior to remedial action. These documents include the Remedial Action Plan (containing the final design and specifications), the UMTRA Project Environmental, Health, and Safety Plan, and other measures that the DOE and the state of Colorado deem appropriate pursuant to the Cooperative Agreement.

## Conclusion

After consideration of all reasonable project alternatives, the DOE has decided to relocate the residual radioactive materials from the Grand Junction site to the Cheney Reservoir site for long-term stabilization and control in compliance with the EPA standards.

Issued in Washington, DC, on August 4, 1988.

Theodore J. Garrish,  
Assistant Secretary for Nuclear Energy.  
[FR Doc. 88-19842 Filed 8-30-88; 8:45 am]  
BILLING CODE 8450-01-M

## Office of Energy Research

### Proposed Establishment of a Federally Funded Research and Development Center; Inhalation Toxicology Research Institute, Albuquerque, NM

AGENCY: Department of Energy.

ACTION: Notice No. 2 of Proposed Establishment of a Federally Funded Research and Development Center (FFRDC).

**SUMMARY:** In accordance with paragraph 6.b.(2) of Office of Federal Procurement Policy, Policy Letter No. 84-1, the Department of Energy (DOE) announces its intention to establish the Inhalation Toxicology Research Institute (ITRI) located in Albuquerque, New Mexico, as an FFRDC. Early programs at ITRI concentrated on the study of radionuclide toxicity problems associated with the development, manufacture, testing and potential use of nuclear weapons, particularly the study of inhaled fission products. Today, the programs at ITRI include: (1) The physical and chemical characterization of airborne toxicants; (2) the disposition of inhaled materials within the body; (3) development of improved understanding of dose-response relationships for inhaled radionuclides; (4) studies of dose-response relationships for inhaled chemical toxicants; (5) studies on human health risks from combined exposure to



radiation sources and industrial chemicals; and (6) studies on the biological factors that influence responses to inhaled materials.

The nature of the research requires specialized facilities to conduct the integrated program of inhalation toxicology research needed to examine these issues. The ITRI facilities include three major inhalation exposure laboratory suites designed for the safe use and control of highly radioactive or potentially carcinogenic materials as well as specialized aerosol research laboratories. ITRI also has modern facilities for the care and housing of 10,000 contaminated and control animals, hospital facilities for specialized medical evaluation and treatment of laboratory animals and extensive pathology facilities. Based upon the long-term, multidisciplinary research programs of this laboratory which are supportive of DOE's mission, the Department has determined that ITRI should be designated as an FFRDC.

**DATE:** Any comments on this proposed action must be received on or before September 30, 1988.

**ADDRESS:** Comments should be addressed to Kristine Forsberg, Deputy Director, Acquisition and Assistance Management, Office of Energy Research, ER-64, U.S. Department of Energy, Washington, D.C. 20545.

Issued in Washington, DC, on August 24, 1988.

David Nelson,  
Executive Director, Office of Energy Research.

[FR Doc. 88-19643 Filed 8-30-88; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

[Docket No. RP88-141-003]

### East Tennessee Natural Gas Co.; Filing

August 26, 1988.

Take notice that on August 17, 1988, East Tennessee Natural Gas Company (East Tennessee) filed certain tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to be effective June 1, 1988.

East Tennessee states that the purpose of this filing changes the effective date of the tariff sheets from July 1, 1988 to June 1, 1988 and requests that this filing replace the filing previously made on July 29, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before September 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Acting Secretary.

[FR Doc. 88-19799 Filed 8-30-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP 88-232-000]

### Phillips Gas Pipeline Co.; Proposed Changes in Rates and Charges

August 25, 1988.

Take notice that on August 18, 1988, Phillips Gas Pipeline Company ("PGPL") filed, pursuant to section 4 of the Natural Gas Act and § 154.63 of the Federal Energy Regulatory Commission's ("Commission") regulations, a Notice of Proposed Changes in Rates and Charges, a Third Revised Sheet No. 6 to its FERC Gas Tariff, Original Volume No. 1 and supporting documentation. The proposed effective date of the revised tariff sheet is the above stated date of filing.

PGPL states that the sole purpose of this filing is to decrease PGPL's firm and interruptible transportation rates to reflect a change in its depreciation and amortization rate from four percent (4%) per year to two and one-half percent (2.5%) per year. PGPL states that this decrease is justified by the unique nature of its pipeline and by the fact that due to market conditions its transportation services rates must be discounted substantially below present maximum rates. PGPL further requests that the change in depreciation and amortization be allowed to become effective as of January 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 1, 1988. Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Acting Secretary.

[FR Doc. 88-19800 Filed 8-30-88; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3438-3]

### California State Motor Vehicle Pollution Control Standards; Opportunity for Public Hearing

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of an opportunity for public hearing.

**SUMMARY:** The California Air Resources Board (CARB) has notified EPA that it has amended its emission standards and test procedures to establish certification procedures for 1975 and later model year used (two model years old or older) imported nonconforming passenger cars, light-duty trucks and medium-duty vehicles (hereinafter "vehicles") which have been modified to conform to U.S. Federal emission standards. California has requested that EPA grant a waiver of Federal preemption for these amendments pursuant to section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b). This notice announces that EPA has tentatively scheduled a public hearing for September 30, 1988, to consider CARB's request and to hear comments from interested parties regarding CARB's amendments. Any party desiring to present oral testimony for the record at the public hearing, instead of, or in addition to presenting written comments, must notify EPA by September 20, 1988. If no party informs EPA that it wishes to testify on these certification procedures for used modified imported vehicles, no hearing will be held and EPA will consider CARB's request based on written submissions to the record.

It should be noted that these amendments are in addition to California's certification procedures for new modified imported vehicles (less than two years old) for which a waiver has already been granted (See Docket EN-86-15). Therefore, parties wishing to comment should confine the scope of their comments to issues pertaining to



the certification procedures for *used* modified imported vehicles.

**DATES:** EPA will hold a public hearing on September 30, 1988, beginning at 9:00 a.m., if any party notifies EPA by September 20, 1988, that it wishes to present oral testimony regarding CARB's request. Any party may submit written comments regarding CARB's request by October 31, 1988.

**ADDRESSES:** EPA will hold the public hearing announced in this notice at: U.S. Environmental Protection Agency, Regional Office (Region IX), 215 Fremont Street, San Francisco, California. For the name of the hearing room in the Regional Office contact Ms. Joan Baxter, Attorney/Advisor, U.S. Environmental Protection Agency, (EN-340-F), 401 M Street SW., Washington, DC 20460, (202) 382-2522. Parties wishing to present oral testimony at the public hearing should notify in writing Charles N. Freed, Director, Manufacturers Operations Division at the same address. Any party may also submit written comments regarding the waiver request in duplicate to U.S. Environmental Protection Agency, Central Docket Section, to the attention of Docket EN-88-08, LE-131, Room 4, South Conference Center, Waterside Mall, 401 M Street SW., Washington, DC 20460. Copies of material relevant to the waiver request (Docket EN-88-08) will be available for public inspection during normal working hours (8:00 a.m. to 3:30 p.m., Monday through Friday) at the same docket address noted above.

**FOR FURTHER INFORMATION CONTACT:** Joan S. Baxter, Attorney/Advisor, Manufacturer Operations Division (EN-340-F), U.S. Environmental Protection Agency, Washington, DC 20460. Telephone: (202) 382-2522.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background and Discussion**

Section 209(a) of the Act as amended, 42 U.S.C. 7543(a), provides in part: "No state or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part \* \* \* [or] require certification, inspection, or any other approval relating to the control of emissions as condition precedent \* \* \* to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment."

Section 209(b) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a) for California "if the State determines that [it] \* \* \* standards will

be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such waiver shall be granted if the Administrator finds that—(A) the determination of the State is arbitrary and capricious, (B) [California] does not need such \* \* \* standards to meet compelling and extraordinary conditions, or (C) [its] standards and accompanying enforcement procedures are not consistent with section 202(a) of [the Act]."

Once California has received a waiver of the application of the prohibitions of section 209(a) for its standards and enforcement procedures for a class of vehicles, it may adopt other conditions precedent to initial retail sale, titling or registration of the subject class vehicles without the necessity of receiving a further waiver of Federal preemption.

By letter dated August 5, 1987, CARB submitted to EPA a request for waiver of Federal preemption for certain amendments to its emission standards and test procedures. These amendments provide for the certification of used (two model years old or older) modified imported vehicles. The amendments establish a new program with two distinct elements: (1) Certification requirements and procedures for used imported vehicles; and (2) licensing and enforcement provisions applicable to vehicle emission test laboratories.

The certification procedures provide that only modifiers registered as California automotive repair dealers may apply to licensed laboratories for certification of these vehicles. Licensed laboratories will issue Certificates of Conformance to owners of vehicles meeting the certification requirements. The licensed laboratory will be responsible for determining whether the vehicle meets the emission standards, complies with fill pipe requirements, has been furnished with an owner's manual containing maintenance instructions for the newly modified vehicles, complies with California's tune-up label specifications and has tamper-resistant idle mixture adjustments. The certificate, which will contain information about applicable standards, test results and the modifier, will then be used by the vehicle owner to register the vehicle.

The emission standards applicable to used modifier-certified motor vehicles will be the California new vehicle exhaust and evaporative emission standards for the model year of the vehicle. No deterioration factor will be applied and the vehicle will have to meet the standards regardless of mileage.

Under CARB's licensing requirements, laboratories are required to:

1. Submit to random inspections of the test facility and any vehicle on the premises;
2. Keep records for both testing and quality control;
3. Agree to perform correlation testing at the CARB's request; and
4. Agree to hold each vehicle for up to five calendar days for inspection and testing.

In addition, there are provisions for suspending or revoking licenses, confirmatory testing by the CARB and collection of fees for issuing certificates and licensing.

California has stated in its August 5, 1987, letter that it has determined that its amended standards are, in the aggregate, at least as protective of the public health and welfare as the applicable Federal standards and that this determination is not arbitrary or capricious. Further, California states that it continues to need its standards to meet compelling and extraordinary conditions. Finally, California states that these amendments are not inconsistent with section 202(a) of the Act, since the procedures are technologically feasible given the available lead time and they do not impose certification requirements such that manufacturers would be unable to meet the two sets of requirements with the same test vehicle.

California's request will be considered according to the requirements for a full waiver determination, and therefore an opportunity for a hearing is being provided to consider comments from interested parties. Any party wishing to present testimony at the hearing should address the following issues:

- (1) Whether or not California's determination that the amended standards are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious;
- (2) Whether or not California's needs its standards to meet compelling and extraordinary conditions; and
- (3) Whether or not California standards and accompanying enforcement procedures are consistent with section 202(a) of the Act.

##### **II. Procedures for Public Participation**

If the scheduled hearing takes place, it will provide an opportunity for interested parties to state orally their views or arguments or to provide pertinent information concerning the amendments at issue. Any party desiring to make an oral statement should file ten (10) copies of its proposed testimony and other relevant



material along with its request for a hearing with the Director of EPA's Manufacturers Operations Division at the Director's address listed above not later than September 20, 1988. In addition, the party should submit 25 copies, if feasible, of the planned statement to the Presiding Officer at the time of the hearing.

If EPA does hold the hearing, the Agency will make a verbatim record of the proceedings. Interested persons may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. EPA will base its determination with regard to CARB's request on the record of the public hearing, if any, and on any other relevant written submissions and other pertinent information. This information will be available for public inspection at the EPA Central Docket Section.

Dated: August 24, 1988.

Richard Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 88-19797 Filed 8-30-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-240082; FRL-3435]

#### State Registration of Pesticides

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, from 28 States. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the Federal Register.

**DATE:** The last entry for each item is the date the State registration of that product became effective.

**FOR FURTHER INFORMATION CONTACT:** Owen F. Beeder, Registration Division (TS-766C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC. Office location and telephone number: Rm. 716A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703)-557-7893.

**SUPPLEMENTARY INFORMATION:** This notice only lists the section 24(c) applications submitted to the Agency. The Agency has 90 days to approve or disapprove each application listed in

this notice. Applications that are not approved are returned to the appropriate State for action. Most of the registrations listed below were received by the EPA in May and June of 1988. Receipts of State registrations will be published periodically. Of the following registrations, none involve a changed-use pattern (CUP). The term "changed-use pattern" is defined in 40 CFR 162.3(k) as a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from a nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

#### Alabama

**EPA SLN No. AZ 88 0003.** FMC Corp. Agricultural Chemical Group. Registration is for Furadan 4F Insecticide-Nematicide to be used on grain sorghum to control chinch bugs. June 10, 1988.

#### Arizona

**EPA SLN No. AZ 88 0010.** Rohm and Haas Co. Registration is for Kelthane 35 Agricultural Miticide to be used on cantaloupes, cucumbers, melons, pumpkins, squash and watermelons. May 17, 1988.

**EPA SLN No. AZ 88 0011.** Gowan Co. Registration is for Gowan Methyl Parathion 7.5 to be used on Bermuda grass seed crop to control thrips and flugorids. May 19, 1988.

**EPA SLN No. AZ 88 0012.** Merrill Farms dba Yuma Farming Co. Registration is for Prokil Ethyl-Methyl Parathion 6-3E to be used on Chinese cabbage to control aphids. June 21, 1988.

**EPA SLN No. AZ 88 0013.** Insecta Paint, Inc. Registration is for Insecta to be used on sewer manholes to control cockroaches and spiders. June 1, 1988.

**EPA SLN No. AZ 88 0014.** Uniroyal Chemical Co., Inc. Registration is for Dimlin-2F to be used on cotton to control boll weevils. June 3, 1988.

**EPA SLN No. AZ 88 0015.** Merrill Farms dba Yuma Farming Co. Registration is for Manzate D to be used on Chinese cabbage to control downy mildew. June 21, 1988.

**EPA SLN No. AZ 88 0016.** Merrill Farms dba Yuma Farming Co. Registration is for Prokil Methyl Parathion 5 to be used on Chinese cabbage to control aphids. June 21, 1988.

**EPA SLN No. AZ 88 0017.** Merrill Farms dba Yuma Farming Co. Registration is for D-Z-H Ciba-Geigy Diazinon 50W to be used on Chinese cabbage to control aphids. June 21, 1988.

#### California

**EPA SLN No. CA 88 0012.** Uniroyal Chemical Co., Inc. Registration is for Omite-6 to be used on pear and apple orchard floors to control spider mites and weeds. June 8, 1988.

#### Connecticut

**EPA SLN No. CT 88 0006.** UAF Special Products. Registration is for Fenvalerate Concentrate 2357 to be used on *Taxus* species to control adult black vine weevils. June 2, 1988.

**EPA SLN No. CT 88 0007.** CT Agricultural Experiment Station. Registration is for Menthol to be used on honey bee colonies to control tracheal mites. June 22, 1988.

#### Georgia

**EPA SLN No. GA 88 0004.** Chevron Chemical Co. Registration is for Orthene 75S Soluble Powder to be used on southern pine seed orchards to control thrips, coneworms, coneborers, and seedbugs. June 17, 1988.

#### Florida

**EPA SLN No. FL 88 0005.** E.I. du Pont de Nemours & Co., Inc. Registration is for Du Pont Lannate Insecticide to be used on Chinese broccoli to control cabbage loopers, imported cabbageworms, and diamond back moths. June 15, 1988.

#### Idaho

**EPA SLN No. ID 88 0005.** BASF Corp. Chemicals Div. Registration is for Poast Herbicide to be used on selective broad spectrum for postemergence control of certain grasses. June 10, 1988.

#### Indiana

**EPA SLN No. IN 88 0001.** Dow Chemical Co., Inc. Registration is for Dow Antimicrobial to be used on publicly owned treatment work to control bacteria, fecal coliform bacteria, fungi, and yeasts. May 15, 1988.

**EPA SLN No. IN 88 0002.** Pennwalt Corp. Registration is for PennCap-M Microencapsulated Insecticide to be used on field corn to control stink bugs. April 20, 1988.

**EPA SLN No. IN 88 0003.** Uniroyal Chemical Co., Inc. Registration is for Omite 6E to be used on apples to control mites. May 27, 1988.

#### Maine

**EPA SLN No. ME 88 0002.** Sandoz Corp Protection Co. Registration is for Trident Biological Insecticide to be used on potatoes to control Colorado potato beetles. June 15, 1988.



**Michigan**

*EPA SLN No. MI 88 0004.* Gustafson, Inc. Registration is for Gustafson Thiram 50 WP Dyed to be used on onion seed to control smut. May 17, 1988.

*EPA SLN No. MI 88 0005.* Gustafson, Inc. Registration is for Pennwalt Topsin M 70% WP to be used on dry edible beans to control anthracnose. May 17, 1988.

*EPA SLN No. MI 88 0006.* Michigan Dept. of Agriculture, Pesticide and Plant Pest Management Div. Registration is for Menthol to be used on honey bee colonies to control tracheal mites. May 23, 1988.

*EPA SLN No. MI 88 0007.* Gustafson Inc. Registration is for Gustafson Thiram 50 WP Dyed to be used on onion seed to control smut. May 17, 1988.

**Minnesota**

*EPA SLN No. MN 88 0001.* Metropolitan Mosquito Control District, St. Paul. Registration is for Zoecon Altosid Liquid Larvicide Mosquito Growth Regulator to be used on field sites as larvacide growth regulator for control of mosquitos. June 30, 1988.

**Mississippi**

*EPA SLN No. MS 88 0004.* Mobay Corp. Agricultural Chemicals Div. Registration is for Guthion 35% Wettable Powder to be used on southern pine orchards to control coneworms and seedworms. April 26, 1988.

*EPA SLN No. MS 88 0005.* Ciba-Geigy Corp., Agricultural Division. Registration is for D-Z-N Diazinon 50W Insecticide to be used on nursery stock, including nonbearing fruits and nuts, to control fire ants. May 23, 1988.

*EPA SLN No. MS 88 0006.* Ciba-Geigy Corp., Agricultural Division. Registration is for D-Z-N Diazinon AG500 to be used on nursery stock to control imported fire ants. May 23, 1988.

**Montana**

*EPA SLN No. MT 88 0004.* Rohm and Haas Co. Registration is for Kerb 50W Herbicide to be used on seeded lettuce for preemergence control of certain grasses and annual broadleaf weeds. April 18, 1988.

**Nebraska**

*EPA SLN No. NE 88 0002.* Elanco Products Co. Registration is for Treflan EC, Treflan 5, and Treflan M.T.F. to be used on crambe (for seed production only) to control weeds. April 26, 1988.

*EPA SLN No. NE 88 0004.* Mobay Corp. Agricultural Chemicals Div. Registration is for Furdan 4F to be used on grain sorghum to control chinchbugs and greenbugs. June 16, 1988.

**Nevada**

*EPA SLN No. NV 88 0002.* Sandoz Corp Protection Co. Registration is for Spur 22 EW Insecticide to be used on alfalfa to control aphids and lygus. April 26, 1988.

*EPA SLN No. NV 88 0003.* Fairfield American Corp. Registration is for Permanone 40% EC to be used on rodent nesting and bedding materials to control fleas and other ectoparasites associated with squirrels and mice. May 13, 1988.

*EPA SLN No. NV 88 0004.* Fairfield American Corp. Registration is for Pyrenone (4-0.05) and Permanone 0.5 Dust to be used on rodent burrow openings to control fleas and other ectoparasites associated with squirrels and mice. May 16, 1988.

*EPA SLN No. NV 88 0005.* Fairfield American Corp. Registration is for Permanone Pyrenone Liquid Dust to be used on rodent burrow openings to control fleas and other ectoparasites associated with squirrels and mice. May 16, 1988.

*EPA SLN No. NV 88 0006.* An-Tech International Livestock Products, Inc. Registration is for Turbo Insecticidal Ear Tags to be used on beef and nonlactating dairy cattle to control horn flies. May 18, 1988.

**New Jersey**

*EPA SLN No. NJ 88 0001.* Dow Chemical Co. Registration is for Lorsban 4E Insecticide to be used on cranberries to control various insects. April 28, 1988.

**New Mexico**

*EPA SLN No. NM 88 0002.* U.S. Dept. of Agriculture, Animal and Plant Health Inspection Service. Registration is for Compound DRC-1339 98% Concentrate 10% Solution to be used on livestock and crops to control ravens. April 19, 1988.

*EPA SLN No. NM 88 0003.* Fairfield American Corp. Registration is for Permanone Pyrenone Liquid Dust to be used on rodent habitats to control fleas. May 9, 1988.

*EPA SLN No. NM 88 0004.* Fairfield American Corp. Registration is for Pyrenone (4-0.05) Permanone 0.5 Dust to be used on rodent burrow openings to control fleas and other ectoparasites associated with squirrels, chipmunks, rats, and mice. May 9, 1988.

*EPA SLN No. NM 88 0005.* Fairfield American Corp. Registration is for Permanone Pyrenone Liquid Dust to be used on insect-bait tubes to control fleas and other ectoparasites associated with squirrels, chipmunk, rats, and mice. May 9, 1988.

**North Carolina**

*EPA SLN No. NC 88 0002.* Griffin Corp. Registration is for Linex 4L to be

used on clary sage to control chickweed. April 6, 1988.

*EPA SLN No. NC 88 0003.* Chevron Chemical Co. Registration is for Cobra Herbicide to be used on soybeans to control Witchweed. April 6, 1988.

*EPA SLN No. NC 88 0006.* Rhone-Poulenc Ag. Co. Registration is for Larvin (R) Brand 3.2 Thiodicarb Insecticide to be used on soybeans to control several pests. June 15, 1988.

**Ohio**

*EPA SLN No. OH 88 0002.* ICI Americas, Inc., Agricultural Products. Registration is for Gramoxone Super Herbicide to be used on lettuce to control annual broadleaf weeds and grasses. April 9, 1988.

**Oklahoma**

*EPA SLN No. OK 88 0002.* Mobay Corp. Agricultural Chem. Div. Registration is for DI-Syston 8 to be used on wheat to control aphids and mites. May 16, 1988.

*EPA SLN No. OK 88 0003.* FMC Corp. Registration is for Command 4EC Herbicide to be used on soybeans to control various weeds and grasses. May 25, 1988.

**Oregon**

*EPA SLN No. 88 0004.* E.I. du Pont de Nemours & Co., Inc. Registration is for Du Pont Vendex 4L Miticide to be used on raspberries to control two-spotted spider mites. May 12, 1988.

*EPA SLN No. OR 88 0005.* E.I. du Pont de Nemours & Co., Inc. Registration is for Du Pont Vendex 50 WP Miticide to be used on raspberries to control two-spotted spider mites. May 12, 1988.

*EPA SLN No. OR 88 0006.* Platte Chemical Co. Registration is for Clean Crop Dimethoate 267 EC to be used on cherries to control western cherryfruit flies. April 28, 1988.

*EPA SLN No. OR 88 0008.* Uniroyal Chemical Co., Inc. Registration is for Omite-6E to be used under pear trees and apple trees to control mites. May 31, 1988.

*EPA SLN No. OR 88 0009.* Prentiss Drug & Chemical Co., Inc. Registration is for Prentox Diazinon AG-500 Insecticide to be used on grass seed fields to control cranberry girdler. June 22, 1988.

**Pennsylvania**

*EPA SLN No. PA 88 0002.* Sandoz Crop Protection Co. Registration is for Trident Biological Insecticide to be used on potatoes to control Colorado potato beetles. May 23, 1988.

*EPA SLN No. PA 88 0003.* Uniroyal Chemical Co., Inc. Registration is for



Omite-6E to be used on apples to control mites. June 8, 1988.

#### Tennessee

**EPA SLN No. TN 88 0004.** Chevron Chemical Co. Registration is for Ortho Monitor 4 Spray to be used on cotton to control aphids, thrips, fleahoppers, and whiteflies. April 26, 1988.

#### Virginia

**EPA SLN No. VA 88 0003.** Uniroyal Chemical Co., Inc. Registration is for Omite 6E to be used on apples to control European red and two-spotted spider mites. May 25, 1988.

#### Washington

**EPA SLN No. WA 88 0011.** Sandoz Crop Protection Corp. Registration is for Spur 22 EW Insecticide to be used on alfalfa grown for seed only to control several pests. June 7, 1988.

**EPA SLN No. WA 88 0012.** FMC Corp. Agricultural Chemical Group. Registration is for Thiodia 3 EC to be used on seeded alfalfa to control spotted alfalfa aphids. June 21, 1988.

#### Wisconsin

**EPA SLN No. WI 88 0003.** Platte Chemical Co. Registration is for Clean Crop Diazinon G-14 to be used as soil application to control several worms. May 16, 1988.

**EPA SLN No. WI 88 0004.** Hopkins Agricultural Chemical Co. Registration is for Diazinon 14G Granular Insecticide to be used on cranberries to control cranberry girders (*chrysoteuchia topiaria*). June 14, 1988.

**EPA SLN No. WI 88 0005.** Platte Chemical Co. Registration is for Diazinon G-14 to be used on cranberries to control cranberry girdler. June 6, 1988.

**EPA SLN No. WI 88 0006.** Howard Johnson's Enterprises, Inc. Registration is for Diazinon 14G Granules to be used on cranberries to control cranberry girdler. June 6, 1988.

**EPA SLN No. WI 88 0007.** Pratt-Garbiel Div., Miller Chemical & Fertilizer Corp. Registration is for 14% Diazinon Granular to be used on cranberries to control cranberry girdlers. June 24, 1988.

**EPA SLN No. WI 88 0008.** Fairfield American Corp. Registration is for Permanone Tick Repellent to be used as clothing treatment for personal protection to control ticks, chiggers, and mosquitoes. May 23, 1988.

**EPA SLN No. WI 88 0010.** Platte Chemical Co. Registration is for Clean Corp Malathion 57 EC to be used on alfalfa and *plagiognathus* to control aphids, plant bugs, and other pests. June 27, 1988.

(Sec. 24 as amended, 92 Stat. 835 (7 U.S.C. 136).)

Dated August 15, 1988.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 88-19299 Filed 8-30-88 8:45 am]

BILLING CODE 6560-50-M

[OPP-42028E; FRL-3437-3]

#### Delaware State Plan for Certification of Applicators of Pesticides Classified for Restricted Use

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In the Federal Register of March 2, 1988 (53 FR 6691), the Agency announced its intention to approve proposed amendments to Delaware's State Plan for Certification of Applicators of Pesticides Classified for Restricted Use. The comment period for the proposed amendments ended April 1, 1988; no comments were received. This notice announces the completion of the notice and comment period for Delaware's proposed amendments. Upon passage of the amendments by the State legislature, a notice will be published in the Federal Register announcing final approval of the amendments by EPA. Until the notice of final approval is published in the Federal Register the existing plan will remain in effect.

**ADDRESSES:** Copies of the Delaware State Plan and the proposed amendments are available for review at the following locations:

1. Toxics and Pesticides Branch (3HW40), Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107.
2. Pesticide Compliance Supervisor, 2320 S. DuPont Highway, Dover, DE 19901.

**FOR FURTHER INFORMATION CONTACT:** Pesticide Certification and Training Officer, Toxics and Pesticides Branch (3HW42), Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107, (215-597-8067).

**SUPPLEMENTARY INFORMATION:** The Delaware State Plan for Certification of Applicators of Pesticides Classified for Restricted Use was approved on January 31, 1978, and notice of the approval appeared in the Federal Register of February 14, 1978 (43 FR 6320). Delaware requested to amend its Plan by establishing additional requirements for the training and recertification of pesticide applicators.

In addition, Delaware proposed the subdivision of the category Industrial, Institutional, Structural, and Health

Related Pest Control to include the sub-categories "Fumigation," "Wood Preservative Treatments," and "Miscellaneous Pest Control."

The Agency published a notice of intent to approve these proposed amendments; no comments were received. The issue has been referred back to the State for legislative action. Upon passage of the revised plan by the State legislature, EPA will issue a notice approving the revision of the plan.

Dated: August 18, 1988.

Stephen R. Wassersug,

Acting Regional Administrator, Region III.

[FR Doc. 88-19793 Filed 8-30-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-42027E; FRL-3437-7]

#### District of Columbia State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of approval of amendments to plan.

**SUMMARY:** In the Federal Register of March 2, 1988 (53 FR 6691), the Agency announced its intention to approve certain amendments to the District of Columbia's State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides. The comment period for the proposed amendments ended April 1, 1988; no comments were received. This notice announces the Agency's approval of the District of Columbia's proposed amendments.

**DATE:** This approval is effective August 31, 1988.

**ADDRESSES:** Copies of the revised District of Columbia State Plan are available for review at the following locations:

1. Toxics and Pesticides Branch (3HW40), Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107.
2. Department of Consumer & Regulatory Affairs, Pesticides and Hazardous Waste Management Branch, Pesticides Section, 5010 Overlook Ave. SW., Suite 114, Washington, DC 20032-5397.

**FOR FURTHER INFORMATION CONTACT:** Pesticide Certification and Training Officer, Toxics and Pesticides Branch (3HW42), Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107, (215-597-8067).



**SUPPLEMENTARY INFORMATION:** The District of Columbia State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides was approved November 24, 1978, and notice of the approval appeared in the *Federal Register* of December 8, 1978 (43 FR 57656). The District of Columbia requested to amend its Plan by updating the requirements for pesticide applicator certification and recertification and updating the penalties for civil infractions.

In addition, the District of Columbia proposed to further subdivide Category 3 to include a new subcategory, "Interior Landscapes."

The Agency received no comments on the proposed amendments and hereby approves them.

Dated: August 18, 1988.

Stephen R. Wassersug,

Acting Regional Administrator, Region III.

[FR Doc. 88-19791 Filed 8-30-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-42023D; FRL-3437-6]

#### Maryland State Plan for Certification of Pesticide Applications

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of approval of amendments to plan.

**SUMMARY:** In the *Federal Register* of March 2, 1988 (53 FR 6692), the Agency announced its intention to approve certain amendments to Maryland's State Plan for Certification of Pesticide Applicators. The comment period for the proposed amendments ended April 1, 1988; no comments were received. Accordingly, this notice announces the Agency's approval of Maryland's proposed amendments.

**DATE:** This approval is effective August 31, 1988.

**ADDRESSES:** Copies of the revised Maryland State Plan are available for review at the following location.

1. Toxics and Pesticide Branch (3HW40), Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19197.
2. Pesticide Applicators Law Section, Maryland Department of Agriculture, 50 Harry S. Truman Parkway, Annapolis, MD 21401.

**FOR FURTHER INFORMATION CONTACT:** Pesticide Certification and Training Officer, Toxics and Pesticides Branch (3HW42), Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107, (215-597-8067).

**SUPPLEMENTARY INFORMATION:** The Maryland State Plan for Certification of Pesticide Applicators was approved April 25, 1977, and notice of the approval appeared in the *Federal Register* of May 18, 1977 (42 FR 25521). Maryland requested to amend its plan by updating the requirements for pesticide applicator certification and recertification. In addition, Maryland proposed the addition of two new commercial applicator categories, Category 11, Miscellaneous (Wood Treatment) and Category 12, Consulting.

The Agency received no comments on the proposed amendments and hereby approves them.

Dated: August 18, 1988.

Stephen R. Wassersug,

Acting Regional Administrator, Region III.

[FR Doc. 88-19785 Filed 8-30-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-42011E; FRL-3437-8]

#### Pennsylvania State Plan for Certification of Pesticide Applicators

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In the *Federal Register* of March 2, 1988 (53 FR 6692), the Agency announced its intent to approve certain proposed amendments to Pennsylvania's State Plan for Certification of Pesticide Applicators. The comment period for the proposed amendments ended on April 1, 1988; no comments were received. This notice announces completion of the notice and comment period for Pennsylvania's proposed amendments. Upon passage of the amendments by the State legislature, a notice will be published in the *Federal Register* announcing final approval of the amendments by EPA. Until the notice of final approval is published in the *Federal Register* the existing plan will remain in effect.

**ADDRESSES:** Copies of the Pennsylvania State Plan and the proposed amendments are available for review at the following locations.

1. Toxics and Pesticides Branch (3HW40), Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19120.
2. Pesticide Operations Coordinator, Bureau of Plant Industry, Pennsylvania Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA 17120.

**FOR FURTHER INFORMATION CONTACT:** Pesticide Certification and Training Officer, Toxics and Pesticides Branch

(3HW42), Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107, (215-597-8067).

**SUPPLEMENTARY INFORMATION:** The Pennsylvania State Plan for Certification of Pesticide Applicators was approved August 8, 1977, and notice of the approval appeared in the *Federal Register* of August 19, 1977 (42 FR 410907). Pennsylvania requested to amend its Plan by establishing additional requirements for the certification and recertification of pesticide applicators.

In addition, Pennsylvania proposed the addition of several new commercial categories including wood preservation technology, commodity fumigation, soil fumigation, interior landscapes, and park pest control, with specific update training requirements for each. Prior notification will be required of commercial applicators using restricted use pesticides as well.

The Agency published a notice of intent to approve these proposed amendments; no comments were received. The issue has been referred back to the State for legislative action. Upon passage of the revised plan by the State legislature, EPA will issue a notice approving the revision of the plan.

Dated: August 18, 1988.

Stephen R. Wassersug,

Acting Regional Administrator, Region III.

[FR Doc. 88-19786 Filed 8-30-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-42017C; FRL-3437-5]

#### Virginia State Plan for Certification of Pesticide Applicators

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of approval of amendments to plan.

**SUMMARY:** In the *Federal Register* of March 2, 1988 (53 FR 6692), the Agency announced its intent to approve certain amendments to Virginia's State Plan for Certification of Pesticide Applicators. The comment period for the proposed amendments ended April 1, 1988; no comments were received. Accordingly, this notice announces the Agency's approval of Virginia's proposed amendments.

**DATE:** This approval is effective August 31, 1988.

**ADDRESSES:** Copies of the revised Virginia State Plan are available for review at the following locations:

1. Toxics and Pesticides Branch (3HW40), Environmental Protection



Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107.

2. Virginia Department of Agriculture and Consumer Services, Division of PAIR, Room 403, or Pesticide, Paint, and Hazardous Substances Section, P.O. Box 1163, Room 403, Richmond, VA 23209.

**FOR FURTHER INFORMATION CONTACT:**

Pesticide Certification and Training Officer, Toxics and Pesticides Branch (3HW42), Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107, (215-597-8067).

**SUPPLEMENTARY INFORMATION:** The Virginia State Plan for Certification of Pesticide Applicators was approved on June 14, 1976. Virginia requested to amend its Plan by updating the requirements for pesticide applicator certification and recertification and adding reciprocal certification for government employees.

In addition, Virginia proposed the further subdivision of commercial category 7, Industrial, Institutional, Structural, and Health Related Pest Control to include sub-category 7A, "General Pest Control"; sub-category 7B, "Wood Infesting Organisms"; sub-category 7B-1, "Wood Preservation and Wood Product Treatment"; sub-category 7C, "Food Processing Pest Control" and sub-category 7D, "Fumigation."

The Agency received no comments on the proposed amendments and hereby approves them.

Dated: August 18, 1988.

Stephen R. Wassersug,  
Acting Regional Administrator, Region III.  
[FR Doc. 88-19787 Filed 8-30-88; 8:45 am]

BILLING CODE 6580-50-M

[OPP-42006E; FRL-3437-4]

**West Virginia State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of approval of amendments to plan.

**SUMMARY:** In the Federal Register of March 2, 1988 (53 FR 6693), the Agency announced its intent to approve certain amendments to West Virginia's State Plan for certification of Commercial and Private Applicators of Restricted Use Pesticides. The comment period for the proposed amendments ended April 1, 1988; no comments were received. Accordingly this notice announces the Agency's approval of West Virginia's proposed amendments.

**DATE:** This approval is effective August 31, 1988.

**ADDRESSES:** Copies of the revised West Virginia State Plan are available for review at the following locations:

1. Toxics and Pesticides Branch (3HW40), Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107.
2. Plant West Division, Capitol Building, West Virginia Department of Agriculture, Charleston, WV 25305

**FOR FURTHER INFORMATION CONTACT:**

Pesticide Certification and Training Officer, Toxics and Pesticides Branch (3HW42), Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107, (215-597-8067).

**SUPPLEMENTARY INFORMATION:** The West Virginia State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides was approved May 26, 1976, and notice of the approval was published in the Federal Register of June 24, 1976 (41 FR 26068). West Virginia requested to amend its Plan by updating the requirements for pesticide applicator certification and recertification and updating the citations concerning civil penalties.

In addition, West Virginia proposed the further subdivision of commercial Category 8, Industrial, Institutional, Structural, and Health Related Pest Control, to include sub-category 8B-WP, "Wood Preservation Only"; sub-category 8D, "Industrial, Institutional Vegetation Management"; and sub-category 8E, "Health Related Pest Control."

The Agency received no comments on the proposed amendments and hereby approves them.

Dated: August 18, 1988.

Stephen R. Wassersug,  
Acting Regional Administrator, Region III.  
[FR Doc. 88-19792 Filed 8-30-88; 8:45 am]  
BILLING CODE 6580-50-M

[OPP-30000/43B; FRL-3438-1]

**Captafol; Decision to Terminate Special Review for Pesticide Products Containing Captafol**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; decision to terminate special review.

**SUMMARY:** On July 22, 1987, EPA issued a Proposed Decision to Terminate a Special Review for Pesticide Products Containing Captafol. This action was based on the fact that the Agency had issued cancellation letters to all

registrants of captafol products on May 1, 1987, in response to registrant requests. All cancellations were effective April 30, 1987. Since there are no remaining registrations for captafol, the Agency has determined that continuing the Special Review is unnecessary. With this Notice, the agency is publicly announcing its decision to terminate the Special Review of captafol.

**EFFECTIVE DATE:** August 31, 1988.

**FOR FURTHER INFORMATION CONTACT:**

By Mail: Karis L. North, Special Review Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.  
Office Location and Phone Number: Room 1006, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-7400.

**SUPPLEMENTARY INFORMATION:**

**Unit I. Introduction and Background**

Captafol was registered as a fungicide for the control of foliar and fruit diseases of certain fruits and vegetables and peanuts. It was also registered for application to seeds of corn, cotton, peanuts, rice and sorghum; to pineapple planting stock as a preplant treatment; and to wood as a preservative treatment.

Captafol was manufactured as a 97 percent technical solely by Chevron Chemical Company. Captafol registrations are also held by the University of Hawaii and Osmose Wood Preserving, Inc., as formulators of the product. Captafol was an ingredient in 16 products registered under section 3 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) as amended September 30, 1978. It was also used in 19 products registered under section 24(C), and in intrastate product pending registrations.

On January 9, 1985, the Agency issued a notice in the Federal Register (50 FR 1103) initiating a Special Review of captafol pursuant to 40 CFR 154.7(a), based on Agency concerns over data showing that captafol causes oncogenic effects in laboratory animals and is highly toxic to fish. Following initiation of the Special Review, the three registrants of Captafol products, Chevron Chemical Company, Osmose Wood Preserving, Inc., and the University of Hawaii requested voluntary cancellation. In response to these requests for voluntary cancellation of captafol product registrations, the Agency, on May 1, 1987, issued cancellation letters to each of the registrants, which outlined the terms of



the cancellation. Therefore, as of April 30, 1987, the effective date of the cancellation, there was no longer any active United States pesticide registrations for captafol.

Since there are no remaining registrations for products containing captafol, on July 22, 1987, the Agency issued a Proposed Decision to Terminate a Special Review for Pesticide Products Containing Captafol. The 30 day comment period provided for in that notice has expired. One set of comments in response to the Notice were submitted to the Agency; those comments are addressed herein.

#### Unit II. Comments, Agency Response to Comments and Agency Decision

The only set of comments received in response to the notice of intent to terminate the Special Review of pesticide products containing captafol was submitted by Chevron Chemical Company, the sole United States registrant of technical captafol.

**Chevron Comment:** "The first statement of concern appears under Part III C, *Risk Reduction Measures and Regulatory Status*. The error is in reference to 'the World Health Organization, which banned the use of captafol on all food crops.' WHO is not a regulatory agency, therefore it does not have the authority to ban products. It is true that in September, 1985 the Joint FAO/WHO Meeting on Pesticide Residues (JMPR), acting under the auspices of WHO, withdrew the captafol Acceptable Daily Intake (ADI) and recommended that captafol not be used where residues in food could arise but even this action was advisory only."

**EPA Response:** The Agency agrees that WHO is not a regulatory organization. However, concern about the carcinogenicity of captafol influenced the JMPR, acting under the auspices of WHO, to recommend withdrawal of the ADI for captafol. Consequently, the use of captafol in international markets has been severely limited.

**Chevron Comments:** "The second statement appears under Part V, *Agency's Decision Regarding Special Review*. The error is in the sentence which ends 'the sale of existing stocks of captafol in the United States is allowed only until December 31, 1987.' Please refer to the Agency's May 1, 1987 response to Chevron's request for voluntary cancellation. The letter states that the registrant may not sell captafol after December 31, 1987, but that 'Other persons may continue to distribute and sell and use existing stocks of these product(s) until the supply is exhausted.'"

**EPA Response:** The Agency agrees with the comment. The existing stocks provision was specified in the Agency's letter of May 1, 1987 and as stated in Chevron's comment is correct. Identical letters were sent to each captafol registrant.

The Agency has concluded that neither of these comments have a bearing on whether to terminate the Special Review. Therefore, the Agency has not altered its view regarding the termination of the Special Review.

**Decision:** Accordingly, this notice is being issued to publicly announce the Agency's decision to terminate the Special Review of pesticide products containing captafol. The decision is effective upon the date of signature of this Notice.

#### Unit III. Availability of Public Docket

The agency has established a public docket (OPP-30000/43B) for the captafol Special Review. This public docket will include this Notice; any other Notices pertinent to the captafol Special Review and the Agency's decision regarding the termination of the Special Review of captafol; non-CBI documents and copies of written comments or other materials submitted to the Agency in response to the initiation of the Special Review and the notice of intent to terminate the Special Review; and a current index of materials in the public docket.

Dated: August 22, 1988.

Victor J. Kimm,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88-19794 Filed 8-30-88; 8:45 am]

BILLING CODE 6560-50-M

[PP 7G3547/T568; FRL-3439-1]

#### Amitraz; Establishment of Temporary Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has established temporary tolerances for the combined residues of the insecticide/miticide amitraz and its metabolites in or on certain raw agricultural commodities. These temporary tolerances were requested by Nor-Am Chemical Co.

**DATE:** These temporary tolerances expire June 21, 1989.

#### FOR FURTHER INFORMATION CONTACT:

By mail: Dennis Edwards, Product Manager (PM) 12, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number:  
Rm. 205, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-2386.

**SUPPLEMENTARY INFORMATION:** Nor-Am Chemical Company, P.O. Box 7495, 3509 Silverside Rd., Wilmington, DE 19803, has requested in pesticide petition (PP) 7G3547 the establishment of temporary tolerances for the combined residues of the insecticide/miticide amitraz N'-(2,4-dimethylphenyl)-N-[[2,4-dimethylphenyl]imino]methyl]-N-methylmethanimidamide and its metabolites containing the 2,4-dimethylaniline moiety in or on the raw agricultural commodities cottonseed at 0.3 parts per million (ppm), in eggs at 0.01 ppm, and in the meat, fat, and meat by-products of poultry, goats, horses, and sheep at 0.01 ppm. These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provision of the experimental use permit 45639-EUP-39, which is being used under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined the establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. That total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Nor-Am Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire June 21, 1989. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such



revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the *Federal Register* of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: August 23, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-19798 Filed 8-30-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44515; FRL-3437-9]

#### TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

**SUMMARY:** This notice announces the receipt of test data on 1,2,3-trichlorobenzene (CAS No. 87-61-6), 1,2,4-trichlorobenzene (CAS No. 120-82-1), vinylidene fluoride (CAS No. 75-38-7), and vinyl fluoride (CAS No. 75-02-5), submitted pursuant to final test rules under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

#### FOR FURTHER INFORMATION CONTACT:

Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** Section 4(d) of TSCA requires EPA to publish a notice in the *Federal Register* reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

#### I. Test Data Submissions

##### A. Trichlorobenzenes

Test data for 1,2,3-trichlorobenzene and 1,2,4-trichlorobenzene was submitted by Standard Chlorine Chemical Company pursuant to a test

rule at 40 CFR 799.1053. It was received by EPA on August 15, 1988.

The reports submitted describe the acute toxicity of 1,2,3-trichlorobenzene to fathead minnow (*Pimephales promelas*), the Atlantic silverside (*Menidia menidia*), and mysid shrimp (*Mysidopsis bahia*) under flow-through conditions, the acute toxicity of 1,2,4-trichlorobenzene to mysid shrimp (*Mysidopsis bahia*) under flow-through conditions, and the chronic toxicity of 1,2,4-trichlorobenzene to mysid shrimp (*Mysidopsis bahia*). Environmental effects testing is required by this test rule.

These chemicals are used in organic intermediates, solvents, dye carriers, transformer and dielectric fluids.

##### B. Fluoroalkenes

Test data for vinyl fluoride was submitted by E.I. du Pont de Nemours and Company, Inc., pursuant to a test rule at 40 CFR 799.1700. It was received by EPA on August 16, 1988. The submission describes a sex-linked recessive lethal test in *Drosophila melanogaster*.

Test data for vinylidene fluoride was submitted by Pennwalt Corporation pursuant to a test rule at 40 CFR 799.1700. It was received by EPA on August 16, 1988. The submission describes a sex linked recessive lethal test in *Drosophila melanogaster*.

Mutagenic effects testing is required by this test rule. Fluoroalkenes are used as precursors in the manufacture of highly specialized polymers and elastomers.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the submissions' completeness.

#### II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44515). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: August 23, 1988.

Frank D. Kover,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 88-19795 Filed 8-30-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51711; FRL-3438-9]

#### Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the *Federal Register* of May 13, 1983 (48 FR 21722). This notice announces receipt of eighty-one such PMNs and provides a summary of each.

**DATES:** Close of Review Periods:

P 88-1721, 88-1722, 88-1723, 88-1724, 88-1726, 88-1727, 88-1729, 88-1730—October 23, 1988.

P 88-1731, 88-1732, 88-1733, 88-1734, 88-1735, 88-1736—October 24, 1988.

P 88-1737, 88-1738—October 25, 1988.

P 88-1739—October 2, 1988.

P 88-1740, 88-1741, 88-1742, 88-1743—October 26, 1988.

P 88-1744, 88-1745, 88-1746, 88-1747—October 29, 1988.

P 88-1748, 88-1749, 88-1750, 88-1751, 88-1752, 88-1753, 88-1754, 88-1755, 88-1756, 88-1757—October 30, 1988.

P 88-1758, 88-1759—October 31, 1988.

P 88-1760—October 30, 1988.

P 88-1761, 88-1762, 88-1763—October 31, 1988.

P 88-1764, 88-1765, 88-1766, 88-1767, 88-1768, 88-1769—November 1, 1988.

P 88-1770—November 6, 1988.

P 88-1771, 88-1772, 88-1773, 88-1774, 88-1775—November 2, 1988.

P 88-1776, 88-1778, 88-1779, 88-1780, 88-1781, 88-1782, 88-1783, 88-1784, 88-1785—November 5, 1988.

P 88-1786, 88-1787, 88-1788, 88-1789, 88-1790, 88-1791, 88-1792, 88-1793, 88-1794, 88-1795, 88-1796, 88-1797, 88-1798, 88-1799, 88-1800, 88-1801, 88-1802, 88-1803—November 6, 1988.

P 88-1804—November 7, 1988.

Written comments by:

P 88-1721, 88-1722, 88-1723, 88-1724, 88-1726, 88-1727, 88-1729, 88-1730—September 23, 1988.

P 88-1731, 88-1732, 88-1733, 88-1734, 88-1735, 88-1736—September 24, 1988.

P 88-1737, 88-1738—September 25, 1988.

P 88-1739—September 2, 1988.

P 88-1740, 88-1741, 88-1742, 88-1743—September 26, 1988.



P 88-1744, 88-1745, 88-1746, 88-1747—September 29, 1988.

P 88-1748, 88-1749, 88-1750, 88-1751, 88-1752, 88-1753, 88-1754, 88-1755, 88-1756, 88-1757—September 30, 1988.

P 88-1758, 88-1759—October 1, 1988.

P 88-1760—September 30, 1988.

P 88-1761, 88-1762, 88-1763—October 1, 1988.

P 88-1764, 88-1765, 88-1766, 88-1767, 88-1768, 88-1769—October 2, 1988.

P 88-1770—October 7, 1988.

P 88-1771, 88-1772, 88-1773, 88-1774, 88-1775—October 3, 1988.

P 88-1776, 88-1778, 88-1779, 88-1780, 88-1781, 88-1782, 88-1783, 88-1784, 88-1785—October 6, 1988.

P 88-1786, 88-1787, 88-1788, 88-1789, 88-1790, 88-1791, 88-1792, 88-1793, 88-1794, 88-1795, 88-1796, 88-1797, 88-1798, 88-1799, 88-1800, 88-1801, 88-1802, 88-1803—October 7, 1988.

P 88-1804—October 8, 1988.

**ADDRESS:** Written comments, identified by the document control number "[OPTS-51711]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

**FOR FURTHER INFORMATION CONTACT:** Lawrence Cullen, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

#### P 88-1721

**Importer:** Roure, Inc.

**Chemical:** (S) Bicyclo[3.2.1] octan-8-ol, 1,5,8-trimethyl.

**Use/Import:** (S) Fragrance ingredient. Import range: 100-150 kg/yr.

**Toxicity Data:** Acute oral toxicity: LD50 > 2,500 species (Rat). Eye irritation: moderate species (Rabbit). Phototoxicity: negative species (Guinea pig). Photoallergenicity: negative species (Guinea pig).

#### P 88-1722

**Importer:** Hoechst Celanese Corporation.

**Chemical:** (G) Polyester resin.

**Use/Import:** (S) Coating resin. Import range: 50,000-100,000 kg/yr.

#### P 88-1723

**Importer:** Hoechst Celanese Corporation.

**Chemical:** (G) Saturated polyester resin.

**Use/Import:** (S) Coating resin. Import range: 50,000-100,000 kg/yr.

#### P 88-1724

**Manufacturer:** Henkel Corporation Process Chemical.

**Chemical:** (G) Vinyl acid polymer. **Use/Production:** (G) Dispersant intermediate. Prod. range: Confidential.

#### P 88-1726

**Manufacturer:** Confidential.

**Chemical:** (G) Mercaptan terminated polyether polymer.

**Use/Production:** (S) Adhesive and sealant. Prod. range: 400,000-1,500,000 kg/yr.

#### P 88-1727

**Importer:** Confidential.

**Chemical:** (S) 2-[5-Ethyltetrahydro-5-(tetrahydro-3-5-(tetrahydro-6-hydroxy-6-(hydroxymethyl)-3,5-dimethyl-2H-pyran-2-yl)-2-furyl)-2-furyl]-9-hydro-beta-methoxy-alpha, gamma, 2,8-tetramethyl-1,6-dioxaspiro(4,5)decano-7-butyric acid, monosodium salt.

**Use/Import:** (S) Testing media. Import range: 10 kg/yr.

#### P 88-1729

**Importer:** Confidential.

**Chemical:** (G) Polyurethane prepolymer with isocyanate reactive end group.

**Use/Import:** (S) Laminating adhesive. Import range: Confidential.

#### P 88-1730

**Manufacturer:** Confidential.

**Chemical:** (G) Chromium complex of sulfonated monoazo dyes, sodium salt.

**Use/Production:** (S) Wool or nylon dye. Prod. range: Confidential.

**Toxicity Data:** Acute oral toxicity: LD50 5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 2,000 mg/kg species (Rabbit). Static acute toxicity: EC50 23.5 mg/l time 48 h species (Daphnia magna). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: positive.

#### P 88-1731

**Manufacturer:** Confidential.

**Chemical:** (G) Copolymer of two quaternary salts.

**Use/Production:** (G) Contained consumer use. Prod. range: 30,000-45,000 kg/yr.

#### P 88-1732

**Manufacturer:** Confidential.

**Chemical:** (G) Alkenyl succinimide.

**Use/Production:** (G) Destructive use. Prod. range: Confidential.

#### P 88-1733

**Manufacturer:** Confidential.

**Chemical:** (G) Alkenylsuccinic anhydride.

**Use/Production:** (G) Destructive use. Prod. range: Confidential.

#### P 88-1734

**Manufacturer:** E.I. Du Pont de Nemours & Co., Inc.

**Chemical:** (G) Acrylic polymer containing quaternary ammonium salts. **Use/Production:** (G) Open, nondispersive. Prod. range: Confidential.

#### P 88-1735

**Manufacturer:** Tennant Company.

**Chemical:** (G) Modified epoxy resin.

**Use/Production:** (G) Open, nondispersive. Prod. range: Confidential.

#### P 88-1736

**Manufacturer:** E.I. Du Pont de Nemours & Co., Inc.

**Chemical:** (G) Acrylic polymer.

**Use/Production:** (G) Open, nondispersive. Prod. range: Confidential.

#### P 88-1737

**Manufacturer:** Confidential.

**Chemical:** (G) Mercaptan terminated polyether polymer.

**Use/Production:** (S) Adhesive and sealants. Prod. range: 400,000-1,500,000 kg/yr.

#### P 88-1738

**Importer:** Confidential.

**Chemical:** (G) Parfluoroalkyl ethylacrylate oligomer.

**Use/Import:** (G) Resin. Import range: Confidential.

#### P 88-1739

**Manufacturer:** Confidential.

**Chemical:** (G) Branched hydrocarbon.

**Use/Production:** (G) Dispersive use. Prod. range: Confidential.

#### P 88-1740

**Importer:** Degussa Corporation.

**Chemical:** (S) Trimethoxyoctylsilane.

**Use/Import:** (G) Waterproofing agent. Import range: Confidential.

#### P 88-1741

**Importer:** Rhone-Poulenc Inc.

**Chemical:** (G) Platinum alkene complex.



*Use/Import.* (G) Chemical intermediate. Import range: 1,800–14,000 kg/yr.

**P 88-1742**

*Manufacturer.* NL Chemicals.  
*Chemical.* (G) Urethane prepolymer.  
*Use/Production.* (G) Open, nondispersive. Prod. range: Confidential.

**P 88-1743**

*Manufacturer.* The Aqualon Company.  
*Chemical.* (G) Amino alkyl substituted hydroxypropylcellulose.  
*Use/Production.* (S) Film former. Prod. range: Confidential.

**P 88-1744**

*Manufacturer.* Confidential.  
*Chemical.* (G) (Nitroaromatic alkyl)halosubstituted heterocycle.  
*Use/Production.* (G) Chemical intermediate. Prod. range: 1,800–14,000 kg/yr.

**P 88-1745**

*Manufacturer.* Confidential.  
*Chemical.* (G) Alkoxyated dialkyl-diethylene triamine, alkyl sulfate salt.  
*Use/Production.* (G) Cellulose softener. Prod. range: 13,500–45,000 kg/yr.

**P 88-1746**

*Manufacturer.* Confidential.  
*Chemical.* (G) Amino alkyl alkamide with urea, alkylsulfate salt.  
*Use/Production.* (G) Cellulose softener. Prod. range: 13,500–45,000 kg/yr.

**P 88-1747**

*Importer.* Ricoh Electronics Inc.  
*Chemical.* (G) 1,4-Bis(2-(alkenoxy)alkoxy)benzene.  
*Use/Import.* (G) Paper manufacture. Import range: 3,700–7,400 kg/yr.

**P 88-1748**

*Manufacturer.* Reichhold Chemicals, Inc.  
*Chemical.* (G) Metal resinate.  
*Use/Production.* (S) Binder for gravure inks. Prod. range: Confidential.

**P 88-1749**

*Manufacturer.* Confidential.  
*Chemical.* (G) Aromatic, polyether urethane.  
*Use/Production.* (S) Coating/adhesive. Prod. range: 20,000–40,000 kg/yr.

**P 88-1750**

*Importer.* Confidential.  
*Chemical.* (G) Heteromonocyclic derivative of a substituted oxoalkanamide.

*Use/Import.* (S) Paper dye. Import range: Confidential.  
*Toxicity Data.* Mutagenicity: positive.

**P 88-1751**

*Manufacturer.* Confidential.  
*Chemical.* (G) Carboxylic acid, metal salt.  
*Use/Production.* (G) Polymerization catalyst. Prod. range: 6,000–40,000 kg/yr.

**P 88-1752**

*Importer.* Sherex Chemical Company, Inc.  
*Chemical.* (G) Aluminum alkyl.  
*Use/Import.* (G) Catalyst. Import range: Confidential.

**P 88-1753**

*Importer.* Confidential.  
*Chemical.* (G) Bis(substituted)carbomonocyclic azo-carbomonocyclicol.  
*Use/Import.* (S) Paper dye. Import range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 2610 mg/kg species(Rat). Acute dermal toxicity: LD50 32 mg/1 species(Rabbit). Static acute toxicity: LC50 32 mg/l time 74 h species(Raintrout). Eye irritation: none species(Rabbit). Mutagenicity: positive.

**P 88-1754**

*Importer.* Confidential.  
*Chemical.* (G) Sulfonyl benzene substituted naphthalene alkali salt.  
*Use/Import.* (S) Acid textile dye. Import range: Confidential.

**P 88-1755**

*Manufacturer.* Chattem Chemicals.  
*Chemical.* (S) Aluminum di n-butoxy ethylacetoacetate chelate.  
*Use/Production.* (G) Chemical intermediate. Prod. range: Confidential.

**P 88-1756**

*Importer.* Confidential.  
*Chemical.* (G) Substituted phenyl tetrazole.  
*Use/Import.* (G) Open, nondispersive. Import range: Confidential.  
*Toxicity Data.* Skin irritation: negligible species(Rabbit). Mutagenicity: negative.

**P 88-1757**

*Manufacturer.* Confidential.  
*Use/Production.* (S) Adhesive for promotor for coating. Prod. range: Confidential.

**P 88-1758**

*Manufacturer.* Rohm and Haas Company.  
*Chemical.* (G) Modified acrylic polymer.

*Use/Production.* (S) Processing additive for polyolefins. Prod. range: Confidential.

**P 88-1759**

*Importer.* Ciba-Geigy Corporation.  
*Chemical.* (G) Substituted bis-styryl derivative.  
*Use/Import.* (S) Fluorescent whitening agent for detergents. Import range: Confidential.

**P 88-1760**

*Importer.* Shin-Estu Silicones of America, Inc.  
*Chemical.* (G) Organosilicone.  
*Use/Import.* (S) Additive for filler. Import range: 2,000–3,000 kg/yr.

**P 88-1761**

*Importer.* Confidential.  
*Chemical.* (G) Isoparaffin.  
*Use/Import.* (G) Solvent. Import range: Confidential.

**P 88-1762**

*Manufacturer.* Confidential.  
*Chemical.* (G) Alkoxyated dialkyl-diethylene triamine, alkyl sulfate salt.  
*Use/Production.* (G) Softening of cellulose. Prod. range: 13,500–45,000 kg/yr.

**P 88-1763**

*Manufacturer.* E.I. Du Pont De Nemours & Co., Inc.  
*Chemical.* (G) Hydrochlorofluoro alkane.  
*Use/Production.* (S) Intermediate. Prod. range: Confidential.

**P 88-1764**

*Manufacturer.* Ciba-Geigy Corporation.  
*Chemical.* Ethanone, 1-(4-chlorophenyl)-2,2,2-trifluoro-omega-(1,3-dioxolan-2-yl-methyl)oxime.  
*Use/Production.* (S) Seed treatment product. Prod. range: Confidential.  
*Toxicity Data.* Acute oral toxicity: LD50 669 mg/kg species(Rat). Acute dermal toxicity: LD50 1544 mg/kg species(Rabbit). Inhalation toxicity: LC50 >1.21 mg/1 species(Albino rat). Eye irritation: none species(Rabbit). Skin irritation: moderate species(Rabbit). Mutagenicity: negative. Skin sensitization: negative species(Guinea pig).

**P 88-1765**

*Manufacturer.* Hercules Incorporated.  
*Chemical.* (G) Epoxy resin.  
*Use/Production.* (G) Manufacture of carbon/epoxy prepegs. Prod. range: Confidential.

**P 88-1766**

*Manufacturer.* Confidential.



*Chemical.* (G) Condensation polymer of glycols and organic acids.

*Use/Production.* (G) Resin for coatings. Prod. range: Confidential.

**P 88-1767**

*Manufacturer.* Confidential.

*Chemical.* (G) Condensation polymer of glycols and organic acids.

*Use/Production.* (G) Resin for coatings. Prod. range: Confidential.

**P 88-1768**

*Manufacturer.* Products Research & Chemical Corporation.

*Chemical.* (G) Polysulfide phenolic adduct.

*Use/Production.* (S) Resin for adhesion promotion. Prod. range: 31,800-50,000 kg/yr.

**P 88-1769**

*Manufacturer.* Products Research & Chemical Corporation.

*Chemical.* (G) Polysulfide phenolic adduct.

*Use/Production.* (S) Resin for adhesion promotion. Prod. range: 43,138 kg/yr.

**P 88-1770**

*Manufacturer.* Products Research & Chemical Corporation.

*Chemical.* (G) Polysulfide phenolic resin adduct.

*Use/Production.* (S) Resin for adhesion promotion. Prod. range: 33,636 kg/yr.

**P 88-1771**

*Manufacturer.* Ciba-Geigy Corporation.

*Chemical.* (S) 2,2,2-trifluoro-4'-chloroacetophenone oxime.

*Use/Production.* (S) Site-limited intermediate. Prod. range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 500-5,050 mg/kg species (Rat). Acute dermal toxicity: LD50 >2,020 mg/kg species(Rabbit). Eye irritation: strong species(Rabbit). Skin irritation: strong species(Rabbit). Mutagenicity: negative.

**P 88-1772**

*Manufacturer.* Confidential.

*Chemical.* (G) Graft copolymer on polyvinylalcohol.

*Use/Production.* (G) Contained consumer use. Prod. range: 25,000 kg/yr.

**P 88-1773**

*Manufacturer.* Confidential.

*Chemical.* (G) Epoxy modified silicone.

*Use/Production.* (G) Site limited, intermediate. Prod. range: Confidential.

**P 88-1774**

*Manufacturer.* Confidential.

*Chemical.* (G) Amino modified silicone, halide salt.

*Use/Production.* (G) Finishing agent for fibers and fabrics. Prod. range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 1.87 ml/kg species(Rat). Acute dermal toxicity LD50 0.765 ml/kg species(Rabbit). Eye irritation: moderate species(Rabbit). Skin irritation: slight species(Rabbit).

**P 88-1775**

*Manufacturer.* Confidential.

*Chemical.* (G) Halogenated naphthalic dicarboxylic acid sodium salt.

*Use/Production.* (G) Intermediate (site-limited). Prod. range: Confidential.

**P 88-1776**

*Importer.* Tosoh USA, Inc.

*Chemical.* (G) Chlorosulfonated polymer.

*Use/Import.* (S) Raw material for auto, wire, and lining. Import range: Confidential.

**P 88-1778**

*Manufacturer.* Hercules Incorporation.

*Chemical.* (G) Polysilazane.

*Use/Production.* (G) Manufacture of ceramics. Prod. range: Confidential.

*Toxicity Data.* Eye irritation: moderate species(Rabbit). Skin irritation: strong species(Rabbit).

**P 88-1779**

*Manufacturer.* AT&T Bell Laboratories.

*Chemical.* (G) Transition metal chalcogenide.

*Use/Production.* (G) Battery cathode material. Prod. range: 5,000 kg/yr.

**P 88-1780**

*Manufacturer.* Amoco Chemical Corporation.

*Chemical.* (G) Alkenyl aromatic hydrocarbon.

*Use/Production.* (G) Chemical intermediate. Prod. range: Confidential.

*Toxicity Data.* Acute dermal toxicity: LD50 2 g/kg species(Rabbit). Eye irritation: none species(Rabbit). Skin irritation: slight species(Rabbit).

**P 88-1781**

*Manufacturer.* Amoco Chemical Corporation.

*Chemical.* (G) Alkenyl aromatic hydrocarbon.

*Use/Production.* (G) Chemical intermediate. Prod. range: Confidential.

*Toxicity Data.* Acute dermal toxicity: LD50 2 g/kg species(Rabbit). Inhalation toxicity: LC50 0.28 mg/l species(Rat). Eye irritation: slight species(Rabbit). Skin irritation: moderate species(Rabbit).

**P 88-1782**

*Manufacturer.* Alco Chemical Corporation.

*Chemical.* (G) Vinyl modified nonionic surfactant.

*Use/Production.* (G) Surfactant for thickener. Prod. range: Confidential.

**P 88-1783**

*Manufacturer.* Confidential.

*Chemical.* (G) Alkylbenzene sulfonic acid, sodium salt.

*Use/Production.* (S) Detergent disperseant. Prod. range: Confidential.

**P 88-1784**

*Manufacturer.* Confidential.

*Chemical.* (G) Isocyanate reaction with cyclic primary amines and alkylamines.

*Use/Production.* (G) Oil thickner. Prod. range: Confidential.

**P 88-1785**

*Manufacturer.* Amoco Chemical Corporation.

*Chemical.* (G) Jones dicyclopentadiene aromatic hydrocarbon.

*Use/Production.* (G) Chemical intermediate. Prod. range: Confidential.

*Toxicity Data.* Acute dermal toxicity: LD50 2 g/kg species(Rabbit). Inhalation toxicity: LC50 0.28 mg/l species(Rat). Eye irritation: slight species(Rabbit). Skin irritation: strong species(Rabbit).

**P 88-1786**

*Importer.* Confidential.

*Chemical.* (G) Cycloalkane carboxylic acid alkenyl ester.

*Use/Import.* (S) Fragrance Component. Import range: Confidential.

**P 88-1787**

*Manufacturer.* Huls America.

*Chemical.* (G) 2,4,6,8-tetrahydroxy-2,4,6,8-tetraphenylcyclotetrasiloxane.

*Use/Production.* (G) Surface modifier. Prod. range: Confidential.

**P 88-1788**

*Manufacturer.* E.I. Du Pont De Nemours & Co., Inc.

*Chemical.* (G) Ethylene interpolymer.

*Use/Production.* (G) Extruded and molded parts. Prod. range: Confidential.

**P 88-1789**

*Importer.* Confidential.

*Chemical.* (G) Indaniline dye derivative.

*Use/Import.* (G) Coloring agent. Import range: Confidential.

*Toxicity Data.* Mutagenicity: negative.

**P 88-1790**

*Importer.* Confidential.



*Chemical.* (G) Indoaniline dye derivative.

*Use/Import.* (G) Coloring agent. Import range: Confidential.

**P 88-1791**

*Importer.* Confidential.

*Chemical.* (G) Indoaniline dye derivative.

*Use/Import.* (G) Coloring agent. Import range: Confidential.

**P 88-1792**

*Importer.* Confidential.

*Chemical.* (G) Indoaniline dye derivative.

*Use/Import.* (G) Coloring agent. Import range: Confidential.

*Toxicity Data.* Mutagenicity: negative.

**P 88-1793**

*Importer.* Confidential.

*Chemical.* (G) Imidazolazo dye derivative.

*Use/Import.* (G) Coloring agent. Import range: Confidential.

*Toxicity Data.* Mutagenicity: negative.

**P 88-1794**

*Importer.* Confidential.

*Chemical.* (G) Styryl dye derivative.

*Use/Import.* (G) Coloring agent. Import range: Confidential.

*Toxicity Data.* Mutagenicity: negative.

**P 88-1795**

*Importer.* Confidential.

*Chemical.* (G) Quinophthalon dye derivative.

*Use/Import.* (G) Coloring agent. Import range: Confidential.

*Toxicity Data.* Static acute toxicity: LC50 time. Mutagenicity: negative.

**P 88-1796**

*Importer.* Confidential.

*Chemical.* (G) Styryl dye derivative.

*Use/Import.* (G) Coloring agent. Import range: Confidential.

*Toxicity Data.* Mutagenicity: negative.

**P 88-1797**

*Importer.* Confidential.

*Chemical.* (G) Quinophthalon dye derivative.

*Use/Import.* (G) Coloring agent. Import range: Confidential.

*Toxicity Data.* Mutagenicity: negative.

**P 88-1798**

*Manufacturer.* Confidential.

*Chemical.* (G) Substituted alkylphenyl ether.

*Use/Production.* (G) Destructive use. Prod. range: Confidential.

*Toxicity Data.* Eye irritation: none species (Rabbit). Skin irritation: slight species (Rabbit). Mutagenicity: negative.

**P 88-1799**

*Importer.* Shin-Estu Silicones of America, Inc.

*Chemical.* (G) Organosiloxane. *Use/Import.* (S) Additive for plastics/waxes. Import range: 1,000–2,000 kg/yr.

**P 88-1800**

*Importer.* Shin-Estu Silicones of America, Inc.

*Chemical.* (G) Organopolysiloxane. *Use/Import.* (S) Additive rubber compound. Import range: 100–300 kg/yr.

**P 88-1801**

*Manufacturer.* Confidential.

*Chemical.* (G) Glycol substituted heterocyclic amide.

*Use/Production.* (S) Cellulosis fabric treatment. Prod. range: 2,000,000–6,000,000 kg/yr.

**P 88-1802**

*Manufacturer.* Confidential.

*Chemical.* (G) Polyhydric alcohol substituted heterocyclic amide.

*Use/Production.* (S) Cellulosis fabric treatment. Prod. range: 2,000,000–6,000,000 kg/yr.

*Toxicity Data.* Acute oral toxicity: LD50 20 ml/kg species (Rat).

**P 88-1803**

*Importer.* Confidential.

*Chemical.* (G) Ethylene copolymer. *Use/Import.* (S) Industrial auxiliaries.

Import range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 > 10,000 species (Rat).

**P 88-1804**

*Manufacturer.* Hercules Incorporated.

*Chemical.* (G) Hexadienoyl chloride.

*Use/Production.* (S) Isolated intermediate. Prod. range: Confidential.

Dated: August 18, 1988.

Steve Newburg-Rinn,  
Chief, Public Data Branch, Information  
Management Division, Office of Toxic  
Substances.

[FR Doc. 88-19788 Filed 8-30-88; 8:45 am]

BILLING CODE 6560-50-M

**[OPTS-51712; FRL-3439-2]**

**Toxic and Hazardous Substances;  
Certain Chemicals; Premanufacture  
Notices**

**AGENCY:** Environmental Protection  
Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic  
Substances Control Act (TSCA) requires  
any person who intends to manufacture  
or import a new chemical substance to  
submit a premanufacture notice (PMN)

to EPA at least 90 days before  
manufacture or import commences.  
Statutory requirements for section  
5(a)(1) premanufacture notices are  
discussed in the final rule published in  
the *Federal Register* of May 13, 1983 (48  
FR 21722). This notice announces receipt  
of forty-one such PMNs and provides a  
summary of each.

**DATES:** Close of Review Periods:

P 88-1805—November 8, 1988.

P 88-1806, 88-1807, 88-1808, 88-809,  
88-1810, 88-1811, 88-1812, 88-1813—  
November 7, 1988.

P 88-1814—November 8, 1988.

P 88-1815—November 7, 1988.

P 88-1816—November 6, 1988.

P 88-1817, 88-1818, 88-1819, 88-1820,  
88-1821—November 8, 1988.

P 88-1822, 88-1824, 88-1825, 88-1826,  
88-1827—November 9, 1988.

P 88-181828, 88-1829, 88-1830—  
November 12, 1988.

P 88-1831, 88-1832, 88-1833, 88-1834,  
88-1835, 88-1836, 88-1837, 88-1838, 88-  
1839, 88-1840, 88-1841, 88-1842, 88-  
1843—November 13, 1988.

P 88-1844, 88-1845, 88-1846—  
November 14, 1988.

Written comments by:

P 88-1805—October 9, 1988.

P 88-1806, 88-1807, 88-1808, 88-1809,  
88-1810, 88-1811, 88-1812, 88-1818—  
October 8, 1988.

P 88-1814—October 9, 1988.

P 88-1815—October 8, 1988.

P 88-1816—October 7, 1988.

P 88-1817, 88-1818, 88-1819, 88-1820,  
88-1821—October 9, 1988.

P 88-1822, 88-1824, 88-1825, 88-1826,  
88-1827—October 10, 1988.

P 88-1828, 88-1829, 88-1830—October  
13, 1988.

P 88-1831, 88-1832, 88-1833, 88-1834,  
88-1835, 88-1836, 88-1837, 88-1838, 88-  
1839, 88-1840, 88-1841, 88-1842, 88-  
1843—October 14, 1988.

P 88-1844, 88-1845, 88-1846—October  
15, 1988.

**ADDRESS:** Written comments, identified  
by the document control number  
"[OPTS-51712]" and the specific PMN  
number should be sent to:

Document Processing Center (TS-790),  
Office of Toxic Substances,  
Environmental Protection Agency,  
Rm. L-100, 401 M Street, SW.,  
Washington, DC 20460, (202) 554-1305.

**FOR FURTHER INFORMATION CONTACT:**  
Lawrence Cullen, Premanufacture  
Notice Management Branch, Chemical  
Control Division (TS-794), Office of  
Toxic Substances, Environmental  
Protection Agency, Rm. E-611, 401 M  
Street, SW., Washington, DC 20460 (202)  
382-3725.



**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

**P 88-1805**

*Importer.* American Cyanamid Company.  
*Chemical.* (G) Carbamic acid ester derivative.  
*Use/Import.* (G) Mineral processing. Import range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 461 mg/kg species (Rat). Acute dermal toxicity: LD50 2.0 g/kg species (Rabbit). Eye irritation: none species (Rabbit). Skin irritation: slight species (Guinea pig). Mutagenicity: negative.

**P 88-1806**

*Manufacturer.* Confidential.  
*Chemical.* (G) 2,4-Disubstituted-2-alkylalkane.  
*Use/Production.* (G) Chemical intermediate. Prod. range: Confidential.  
*Toxicity Data.* Acute oral toxicity: LD50 431 mg/kg species (Rat). Acute dermal toxicity: LD50 1.8-2 g/kg species (Rabbit). Eye irritation: strong species (Rabbit). Skin irritation: strong species (Rabbit).

**P 88-1807**

*Manufacturer.* Ashland Chemical Company.  
*Chemical.* (G) Polymeric phosphino carboxylic acid.  
*Use/Production.* (S) Water antiscalant. Prod. range: Confidential.

**P 88-1808**

*Manufacturer.* Ashland Chemical Company.  
*Chemical.* (G) Phosphono carboxylic acid.  
*Use/Production.* (S) Water corrosion inhibitor antiscalant. Prod. range: Confidential.

**P 88-1809**

*Manufacturer.* Ashland Chemical Company.  
*Chemical.* (G) Polymeric additive.  
*Use/Production.* (S) Water antiscalant. Prod. range: Confidential.

**P 88-1810**

*Manufacturer.* Ashland Chemical Company.  
*Chemical.* (G) Polymer based maleic anhydride potassium hydroxide.  
*Use/Production.* (S) Water antiscalant. Prod. range: Confidential.

**P 88-1811**

*Manufacturer.* Ashland Chemical Company.  
*Chemical.* (G) Polymer based maleic anhydride sodium hydroxide.  
*Use/Production.* (S) Water antiscalant. Prod. range: Confidential.

**P 88-1812**

*Manufacturer.* Mazer Chemicals Division.  
*Chemical.* (G) Alkylene polyalkoxyethanol.  
*Use/Production.* (G) Copolymerization. Prod. range: Confidential.

**P 88-1813**

*Manufacturer.* Mazer Chemicals Division.  
*Chemical.* (G) Derivatized alkylene polyalkoxylate.  
*Use/Production.* (G) Chemical intermediate. Prod. range: Confidential.

**P 88-1814**

*Manufacturer.* Mazer Chemicals Division.  
*Chemical.* (G) Derivatized polyalkylene glycol.  
*Use/Production.* (G) Chemical intermediate. Prod. range: Confidential.

**P 88-1815**

*Manufacturer.* Mazer Chemicals Division.  
*Chemical.* (G) Alkylene polyalkoxyethyl sulfonate.  
*Use/Production.* (G) Monomer for copolymerization. Prod. range: Confidential.

**P 88-1816**

*Manufacturer.* Mazer Chemicals Division.  
*Chemical.* (G) Alkylene polyalkoxyethyl ammonium salt.  
*Use/Production.* (G) Monomer for copolymerization. Prod. range: Confidential.

**P 88-1817**

*Manufacturer.* Confidential.  
*Chemical.* (G) Aliphatic polyester polyurethane-polyacrylate.  
*Use/Production.* (S) Coating, modifier for coatings, inks, and adhesives. Prod. range: Confidential.

**P 88-1818**

*Manufacturer.* Shell Oil Company.  
*Chemical.* (G) Modified styrene, diene copolymer.  
*Use/Production.* (G) Open, nondispersive. Prod. range: Confidential.

**P 88-1819**

*Manufacturer.* Confidential.

*Chemical.* (G) Styrenated functional methacrylated acrylate.  
*Use/Production.* (S) Automotive refinish resin. Prod. range: 210,000-250,000 kg/yr.

**P 88-1820**

*Manufacturer.* Confidential.  
*Chemical.* (G) Aliphatic polyester anhydride.  
*Use/Production.* (G) Industrial curing agent. Prod. range: 50,000-100,000 kg/yr.

**P 88-1821**

*Importer.* Uniroyal Chemical Co., Inc.  
*Chemical.* (S) Substituted p-phenylene diamine.  
*Use/Import.* (S) Chemical intermediate. Import range: Confidential.

**P 88-1822**

*Importer.* Confidential.  
*Chemical.* (G) Alkenedioic acid, diester.  
*Use/Import.* (S) Additive for wood coating. Import range: 13,500-15,500 kg/yr.

**P 88-1824**

*Manufacturer.* Confidential.  
*Chemical.* (G) Polyoxypropylene amine derivative.  
*Use/Production.* (G) Resin component. Prod. range: Confidential.

**P 88-1825**

*Manufacturer.* Confidential.  
*Chemical.* (G) Polyoxypropylene amine derivative.  
*Use/Production.* (G) Resin component. Prod. range: Confidential.

**P 88-1826**

*Manufacturer.* Confidential.  
*Chemical.* (G) Acrylic and methacrylic functionalized polymer.  
*Use/Production.* (G) Industrial dispersive. Prod. range: 28,000-30,000 kg/yr.

**P 88-1827**

*Importer.* Organic Dyestuffs Corporation.  
*Chemical.* (G) Acid red 299.  
*Use/Import.* (S) Coloring. Import range: 2,000-6,000 kg/yr.

**P 88-1828**

*Importer.* DSM Resins U.S., Inc.  
*Chemical.* (G) Aliphatic polyurethane elastomers.  
*Use/Import.* (S) Formulation of elastomers coatings. Import range: Confidential.

**P 88-1829**

*Importer.* Confidential.  
*Chemical.* (G) Hydroxy functional acrylic acid.



*Use/Import.* (S) Coatings. Import range: Confidential.

**P 88-1830**

*Manufacturer.* Confidential.  
*Chemical.* (G) Hydroxy functional acrylic resin.

*Use/Production.* (S) Coatings. Prod. range: Confidential.

**P 88-1831**

*Importer.* Sherex Chemical Company.  
*Chemical.* (S) Di-aminebis (cyanato-N) zinc.

*Use/Import.* (S) Rubber accelerator and curing agent. Import range: Confidential

**P 88-1832**

*Manufacturer.* Confidential.  
*Chemical.* (G) Sulfurized trialkyl phosphite.

*Use/Production.* (G) Industrial lubricant additive. Prod. range: Confidential.

**P 88-1833**

*Manufacturer.* General Electric Company.  
*Chemical.* (G) Aromatic polycarbonate oligomers.

*Use/Production.* (G) Chemical intermediate. Prod. range: Confidential.

**P 88-1834**

*Manufacturer.* General Electric Company.  
*Chemical.* (G) Bisphenol-A-polycarbonate aryl end-capped.

*Use/Production.* (G) Engineering thermoplastic resin. Prod. range: Confidential.

**P 88-1835**

*Manufacturer.* General Electric Company.

*Chemical.* (G) Bisphenol-A-polycarbonate, alkylaryl alkyl end-capped.

*Use/Production.* (G) Engineering thermoplastic resin. Prod. range: Confidential.

**P 88-1836**

*Manufacturer.* General Electric Company.

*Chemical.* (G) Bisphenol-A-polycarbonate, alkylaryl end-capped.

*Use/Production.* (G) Engineering thermoplastic resin. Prod. range: Confidential.

**P 88-1837**

*Manufacturer.* General Electric Company.

*Chemical.* (G) BPA chloroformates.  
*Use/Production.* (G) Chemical intermediate. Prod. range: Confidential.

**P 88-1838**

*Importer.* Roure, Inc.

*Chemical.* (S) Cyclohexanone, 2-(1-mercaptoacetyl-1-methyl-ethyl)-5-methyl-, (E) + (Z) in a ratio 60/40.

*Use/Import.* (S) Consumer product. Import Range: 100 kg/yr.

**P 88-1839**

*Importer.* Additives Div., (Ciba-Geigy Corp.).

*Chemical.* (S) Benzenepropanoic acid, 3-(2h-benzotriazol-2-yl)-5-(1, 1-diethylethyl)-4-hydroxy-, methyl ester.

*Use/Import.* (G) Component for polymers. Import range: Confidential.

**P 88-1840**

*Manufacturer.* Mazer Chemicals division.

*Chemical.* (G) Modified alkylene polyalkoxyethanol.

*Use/Production.* (G) Monomer for copolymerization. Prod. range: Confidential.

**P 88-1841**

*Manufacturer.* Confidential.

*Chemical.* (G) Alkylbenzene sulfonic acid, barium salt.

*Use/Production.* (G) Lube oil additive. Prod. range: Confidential.

**P 88-1842**

*Manufacturer.* FMS Corporation.

*Chemical.* (S) 1-Ethanol-2-oxy-agarose.

*Use/Production.* (S) Purified gelling medium. Prod. range: Confidential.

**P 88-1843**

*Manufacturer.* FMC Corporation.

*Chemical.* (G) Propenyl (alkyl) agarose derivative.

*Use/Production.* (S) Purified gelling medium. Prod. range: Confidential.

**P 88-1844**

*Manufacturer.* Confidential.

*Chemical.* (G) Fatty acids, tall-oil compounds with substitute 1H-imidazole.

*Use/Production.* (G) Debonding agent for paper. Prod. range: Confidential.

**P 88-1845**

*Manufacturer.* Confidential.

*Chemical.* (G) End-capped polyether.

*Use/Production.* (G) Intermediate. Prod. range: Confidential.

**P 88-1846**

*Manufacturer.* Confidential.

*Chemical.* (G) End-capped polyether.

*Use/Production.* (G) Intermediate. Prod. range: Confidential.

Date: August 25, 1988.

Steve Newburg-Rinn,

Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-19789 Filed 8-30-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59849; FRL-3439-3]

**Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substance Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the *Federal Register* of May 13, 1983 (48 FR 21722). In the *Federal Register* of November 11, 1984 (49 FR 56066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of eight such PMNs and provides a summary of each.

**DATES:** Close of Review Periods:

Y 88-242—September 5, 1988.

Y 88-243—September 1, 1988.

Y 88-244—September 4, 1988.

Y 88-245, 88-246, 88-247—September 5, 1988.

Y 88-248, 88-249—September 6, 1988.

**FOR FURTHER INFORMATION CONTACT:**

Lawrence Cullen, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.



## Y 88-242

*Manufacturer.* Phillips Petroleum Company.  
*Chemical.* (G) Polyolefin copolymer.  
*Use/Production.* (G) Open, nondispersive. Prod. range: Confidential.

## Y 88-243

*Manufacturer.* Phillips Petroleum Company.  
*Chemical.* (S) 4-Methyl-1-pentene; hydrogen.  
*Use/Production.* (G) Open, nondispersive. Prod. range: Confidential.

## Y 88-244

*Manufacturer.* Confidential.  
*Chemical.* (G) Hydroxy functional acrylic resin.  
*Use/Production.* (S) Coatings. Prod. range: Confidential.

## Y 88-245

*Manufacturer.* GE Plastics.  
*Chemical.* (G) Aromatic polyester resin.  
*Use/Production.* (S) Thermoplastic resin modifier. Prod. range: Confidential.

## Y 88-246

*Manufacturer.* GE Plastics.  
*Chemical.* (G) Aromatic polyether esterified with hydroxyacid or polyester.  
*Use/Production.* (S) Thermoplastic resin for extrusion and molding. Prod. range: Confidential.

## Y 88-247

*Manufacturer.* GE Plastics.  
*Chemical.* (G) Vinyl polymer and aromatic polyether esterified with aromatic hydroxy acid polyester.  
*Use/Production.* (S) Thermoplastic resin for extrusion and molding. Prod. range: Confidential.

## Y 88-248

*Manufacturer.* Confidential.  
*Chemical.* (G) Aliphatic polyester urethane.  
*Use/Production.* (G) Used in coatings applied by industrial manufactures. Prod. range: Confidential.

## Y 88-249

*Manufacturer.* Confidential.  
*Chemical.* (G) Ester-aldehyde.  
*Use/Production.* (G) Coating. Prod. range: Confidential.

Date: August 23, 1988.

Steve Newburg-Rinn,  
 Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-19790 Filed 8-30-88; 8:45 am]

BILLING CODE 6560-50-M

## [FRL-3438-2]

# Water Pollution Control: Dredged and Fill Discharge Program, Jurisdiction; Special Cases, List

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of amendment to consolidated list of special cases.

**SUMMARY:** This notice amends the consolidated list of special cases published in the *Federal Register* on October 24, 1980 (45 FR 70564) to include pocosin wetlands found at the First Colony Farms tract in Tyrell, Hyde, and Washington Counties, North Carolina. The original consolidated list of special cases was developed pursuant to the April 23, 1980, Memorandum (MOU) between the U.S. Army Corps of Engineers (Corps) and EPA. This MOU established policies and procedures that the Corps and EPA utilize in resolving geographical jurisdictional problems arising in connection with the section 404 program regulating the discharge of dredged or fill materials into the waters of the United States. Special cases are those situations where significant issues or technical difficulties exist concerning the jurisdictional scope of section 404 waters, the environmental consequences of jurisdiction are significant and EPA has declared a special interest. The Corps refers jurisdictional questions involving these special cases to EPA for determination of extent of jurisdiction.

**DATES:** This amendment to the consolidated list of special cases was effective February 5, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. Clifford Rader, Environmental Protection Agency, Office of Wetlands Protection (A-104F), 401 M Street SW., Washington, DC 20460, (202) 382-5087.

**SUPPLEMENTARY INFORMATION:** On November 25, 1986, EPA Region IV designated pocosin wetlands in nineteen North Carolina counties as interim special cases under the MOU. This designation included the roughly 35,000 acre First Colony Farms tract in Tyrell, Hyde, and Washington Counties.

The MOU defines special cases as "those situations where significant issues or technical difficulties exist concerning the jurisdictional scope of section 404 waters, the environmental consequences of jurisdiction are significant, and EPA has declared a special interest." EPA has identified significant issues regarding, in particular, the appropriate hydrologic indicators to use in determining whether pocosins are waters of the United States. The First Colony Farms tract raises specific issues in light of ditching

on the tract, which may or may not have altered the hydrology on all or parts of the site.

Additionally, there are significant environmental consequences of the determination of jurisdiction or lack of jurisdiction on this tract. This is one of the largest remaining continuous areas of pocosins. Pocosins are highly valuable for wildlife habitat and water quality improvement, which is particularly significant for the Albermarle and Pamlico Sounds. Further, the precedential nature of this decision reinforces the environmental significance of this determination.

On February 5, 1988, EPA Headquarters concurred with Region IV's designation of the First Colony Farms tract as a special case. Due to continuing discussions with the Corps on the remainder of the interim special case, final action on all but the First Colony Farms tract has been deferred.

Dated: August 22, 1988.

Rebecca W. Hanmer,  
 Acting Assistant Administrator for Water.  
 [FR Doc. 88-19796 Filed 8-30-88; 8:45 a.m.]  
 BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1746]

### Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

August 25, 1988.

Petitions for reconsideration and clarification have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcription Service (202-857-3800). Oppositions to these petitions must be filed September 19, 1988. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Nighttime Operations on Canadian, Mexican, and Bahamian Clear Channels. (MM Docket No. 84-281)

Number of petitions received: 1  
 Subject: Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and



Broadcast Industries. (Gen. Docket No. 87-24)

Number of petitions received: 12

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-19839 Filed 8-30-88; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0132

Title: Cost Allocation Plan

Abstract: The Federal Emergency

Management Agency (FEMA)

provides funding to assist State and local governments with the indirect costs associated with the Civil Defense—State and Local Emergency Management Assistance Program (EMA). This information collection enables FEMA to verify the legitimacy of charges for indirect costs, by providing pertinent information needed in both the accounting and billing process.

Type of Respondents: State governments

Estimate of Total Annual Reporting and

Recordkeeping Burden: 112

Number of Respondents: 56

Estimated Average Burden Hours Per

Response: 1

Frequency of Response: Annually

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: August 23, 1988.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 88-19757 Filed 8-30-88; 8:45 am]

BILLING CODE 6718-21-M

### Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0138

Title: State Administrative Plan

Abstract: A State administrative plan is a one-term submission with periodic amendments to keep it current. The plan is a formal description of each participating State's total civil defense program and related State and local laws, executive directives, rules, plans, and procedures. This information collection is required to determine the eligibility for Federal contributions to a State and its political subdivisions for up to one half of the necessary and essential State and local civil defense personnel and administrative expenses.

Type of Respondents: State governments

Estimate of Total Reporting and

Recordkeeping Burden: 2,240

Number of Respondents: 56

Estimated Average Burden Hours Per

Response: 20

Frequency of Response: Annually

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: August 23, 1988.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 88-19758 Filed 8-30-88; 8:45 am]

BILLING CODE 6718-21-M

### Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0146

Title: State Administrative Plan for

Individual and Family Grant Program

Abstract: This information collection is necessary for the Federal Emergency Management Agency (FEMA) to carry out its role in the Individual and Family Grant (IFG) program. FEMA must approve the States' IFG administrative plan, in order for the States to receive Federal grants. These Federal grants are intended to provide individual and family grants for disaster-related necessary expenses.

Type of Respondents: State governments

Estimate of Total Annual Reporting and

Recordkeeping Burden: 168

Number of Respondents: 56

Estimate Average Burden Hours Per

Response: 3

Frequency of Response: Annually

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: August 23, 1988.

Wesley G. Moore,

Director, Office of Administrative Support.

[FR Doc. 88-19759 Filed 8-30-88; 8:45 am]

BILLING CODE 6718-21-M

### Transportation Accident Planning and Preparedness; Availability of Guidance Document

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice of availability of a transportation accident planning and preparedness guidance document and invitation for submittal of comments.



**SUMMARY:** A draft emergency planning document, *Guidance for Developing State and Local Radiological Emergency Response Plans and Preparedness for Transportation Accidents*, commonly known as "FEMA-REP-5", is available for public distribution and comment. Copies will be distributed to State, Tribal and local governments, and other organizations, by FEMA for review and comment.

This document provides voluntary planning and preparedness guidance in the form of 14 planning objectives and guidance considerations for use by State, Tribal and local governments in developing emergency response plans for transportation accidents involving radioactive materials. The document also provides information on the application of the guidance to other types of emergencies and makes the distinction between elements that are unique to transportation accidents and those that are common to the other types of emergencies. This draft document incorporates comments received from many organizations of the 1983 interim-use edition. This revision emphasizes the voluntary nature of the guidance and the need to tailor planning and preparedness to the unique characteristics and needs of the involved jurisdictions.

This document has been developed by the Federal Radiological Preparedness Coordinating Committee's Subcommittee on Transportation Accidents which is co-chaired by representatives from the U.S. Department of Transportation and FEMA. In addition to the co-chairs, other Committee members include representatives from the Department of Energy, Environmental Protection Agency, Department of Health and Human Services, Nuclear Regulatory Commission, United States Department of Agriculture, Sandia National Laboratories, the Southern States Energy Board and the Western Interstate Energy Board. A copy of this document may be obtained from: Federal Emergency Management Agency, P.O. Box 8181, Washington, DC 20024. Please reference the title and number (FEMA-REP-5) of the document in your request. Comments on this document are requested by November 30, 1988, and should be addressed to: Rules Docket Clerk, Federal Emergency Management Agency, Room 835, 500 C St. SW., Washington, DC 20472. For further information on this document contact: Vern Wingert, Federal Emergency Management Agency, 500 C Street, SW., Room 630, Washington, DC 20472, Telephone No. (202) 646-2872.

Issued at Washington, DC.  
Grant Peterson,  
Associate Director, State and Local Programs  
and Support.  
[FR Doc. 88-19755 Filed 8-30-88; 8:45 am]  
BILLING CODE 6716-20-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket Nos. 79N-0423, 79N-0424, and 79N-0425; DESI 5773]

#### Sulfanilamide-Aminacrine-Allantoin Combination for Vaginal Use; Drug Efficacy Study Implementation; Withdrawal of Approval of Portions of a New Drug Application

**AGENCY:** Food and Drug Administration.  
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of those portions of the new drug application (NDA) for AVC Cream that provide for the combination of sulfanilamide, aminacrine hydrochloride, and allantoin. The basis of the withdrawal is that this combination drug product lacks substantial evidence of effectiveness for its labeled indications. A reformulation of the product containing sulfanilamide alone has been approved as safe and effective.

**EFFECTIVE DATE:** September 30, 1988.

**ADDRESS:** Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 5773 and directed to the Division of Drug Labeling Compliance (HFD-310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** John H. Hazard, Jr., Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

**SUPPLEMENTARY INFORMATION:** In a notice published in the *Federal Register* of August 22, 1983 (48 FR 38093), the Director of the National Center for Drugs and Biologics (now the Center for Drug Evaluation and Research) evaluated AVC Cream containing sulfanilamide, aminacrine, and allantoin as lacking substantial evidence of effectiveness for its labeled indications. The Director also proposed to withdraw approval of the new drug application for this product and offered an opportunity for a hearing on the proposal. FDA also announced the conditions for marketing

an effective reformulation of AVC Cream (sulfanilamide alone labeled only for use in the 30-day treatment of vulvovaginitis caused by *Candida albicans*).

In response, hearing requests were submitted by Merrell Dow Pharmaceuticals, Inc., the holder of the NDA for AVC Cream, and manufacturer of generic versions of the product.

FDA has approved a supplement to NDA 6-530, which provides for the reformulation of AVC Cream to sulfanilamide alone. FDA has also approved many abbreviated NDA's submitted by generic manufacturers. As a consequence, all hearing requests have now been withdrawn. Accordingly, the Director of the Center for Drug Evaluation and Research is withdrawing approval of pertinent parts of the following NDA:

NDA 6-530, AVC Cream, except insofar as it pertains to the formulation containing sulfanilamide alone; Merrell Dow Pharmaceuticals, Inc., Subsidiary of Dow Chemical Co., 2110 E. Galbraith Rd., Cincinnati, OH 45215.

Any drug product that is identical, related, or similar to this product and is not the subject of an approved new drug application is covered by NDA 6-530 and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance at the address given above.

The Director of the Center for Drug Evaluation and Research, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)), and under the authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to this product, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that this product will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

Therefore, pursuant to the foregoing findings, approval of those portions of NDA 6-530 that pertain to the old formulation containing sulfanilamide, aminacrine, and allantoin are withdrawn effective September 30, 1988.

Shipment in interstate commerce of the product above or any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.



Dated: August 17, 1988.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 88-19840 Filed 8-30-88; 8:45 am]

BILLING CODE 4190-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Administration

[Docket No. 88-1851]

### Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESS:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to:

John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

### FOR FURTHER INFORMATION CONTACT:

David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the

proposal and of the OMB Desk Officer for the Department.

**Authority:** Sec. 3507, Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: August 24, 1988.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

**Proposal:** Manufactured Home Construction and Safety Standards Act Reporting Requirements.

**Office:** Housing.

**Description of the Need for the Information and Its Proposed Use:** The National Manufactured Housing Construction and Safety Standards Act authorizes HUD to establish construction and safety standards for manufactured (mobile) homes and to enforce these standards. The standards require pertinent information in the form of labels and notices to be placed in each manufactured home. HUD needs this information to make sure manufacturers are complying with the standards.

**Form Number:** None.

**Respondents:** Individuals or Households, State or Local Governments, and Businesses or Other For-Profit.

**Frequency of Submission:** Recordkeeping and On Occasion.

**Reporting Burden:**

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
SAA Reports.....	34		12		1		408
IPIA Reports.....	16		12		1		192
Consumer Information Cards.....	240,000		1		.48		115,200
State Plans.....	2		1		160		320
Consumer Manuals.....	240,000		1		.08		19,200
Labels and Notices.....	240,000		1		.30		72,000
Recordkeeping.....	240,000		1		.16		38,400

**Total Estimated Burden Hours:**  
245,720

**Status:** Reinstatement.

**Contact:** Donald R. Fairman, HUD, (202) 755-6590 John Allison, OMB, (202) 395-6880.

Date: August 24, 1988.

[FR Doc. 88-19835 Filed 8-30-88; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-88-1852]

### Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

**SUMMARY:** The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

**ADDRESS:** Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and

Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its



proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the

proposal and the OMB Desk Officer for the Department.

**Authority:** Sec. 3507, Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

**Dated:** August 25, 1988.

**John T. Murphy,**

*Director, Information Policy and Management Division.*

**Proposal:** Mortgagee Interview and Questionnaire and Lender Questionnaire

**Office:** Housing

**Description of the Need for the Information and Its Proposed Use:**

HUD conducts periodic on-site reviews of HUD/FHA approved lenders and their branch offices to determine compliance with HUD/FHA origination and servicing requirements and policies. These reviews are necessary to protect FHA borrowers and HUD's insurance funds from lender abuse through negligence and fraudulent business practices.

**Form Number:** HUD-9080A and 9080B

**Respondents:** Business or Other For-Profit

**Frequency of Submission:** On Occasion  
**Reporting Burden:**

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Questionnaire .....	1,200		1		1		1,200

**Total Estimated Burden Hours:** 1,200

**Status:** Extension

**Contact:** J. Parker Deal, HUD, (202) 755-6830; John Allison, OMB, (202) 395-6880

**Dated:** August 25, 1988.

**Proposal:** Description of Materials

**Office:** Housing

**Description of the Need for the Information and Its Proposed Use:**

This information is needed so that builders and sponsors can describe the materials and assembly of dwellings and other improvements to the property. This form, Description of Materials, and attached drawings define the scope and limits of the construction. The information is used

by HUD to estimate the value for FHA mortgage insurance.

**Form Number:** HUD-92005

**Respondents:** Business or Other For-Profit, Federal Agencies or Employees, and Small Businesses or Organizations

**Frequency of Submission:** On Occasion  
**Reporting Burden:**

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Description of materials .....	2,500		40		1/2		50,000

**Total Estimated Burden Hours:** 50,000

**Status:** Extension

**Contact:** Kenneth L. Crandall, HUD (202) 755-6720; John Allison, OMB, (202) 395-6880

**Dated:** August 25, 1988.

**Proposal:** Restriction on Use of Assisted Housing (FR-1588/2383)

**Office:** Public and Indian Housing

**Description of the Need for the Information and Its Proposed Use:**

This rule prohibits Public Housing Agencies (PHAs)/Indian Housing Authorities (IHAs) from making housing assistance available to persons other than U.S. citizens, nationals, and certain categories of eligible aliens. It also requires that an automated system of verifying immigration status be implemented. The information collection consists primarily of recordkeeping

requirements imposed on PHAs/IHAs to assure compliance with Federal statutes.

**Form Number:** None

**Respondents:** Individuals or Households, State or Local Governments, and Non-Profit Institutions

**Frequency of Submission:** On Occasion and Recordkeeping  
**Reporting Burden:**

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Notices .....	3,300		700		.01		23,100
Verification .....	3,300		19		.10		6,270
Policies and Procedures .....	3,300		1		12		39,600
Recordkeeping .....	3,300		791		.01		25,113



Total Estimated Burden Hours: 94,083  
 Status: Revision  
 Contact: Edward C. Whipple, HUD, (202)  
 426-0744; John Allison, OMB (202)  
 395-6880

Dated: August 24, 1988.

[FR Doc. 88-19836 Filed 8-30-88; 8:45 am]

BILLING CODE 4210-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CA-060-08-5101-14-FB20; CA 13198]

#### California; Emergency Area Closure; Riverside County, CA

The following order affecting the lands captioned below, was issued on August 15, 1988.

T. 3 S., R. 3 E., SBM.

Sec. 18, N $\frac{1}{2}$ , N $\frac{1}{2}$  N $\frac{1}{2}$  NE $\frac{1}{4}$  SE $\frac{1}{4}$ .

I have determined that the operation of off-road vehicles in this area poses a significant threat to public safety. Furthermore, off-road vehicle use has caused adverse impacts to the operation and security of wind energy sites located on public lands. Under the authority of 43 CFR 8341.2(a), I hereby order the above captioned public lands closed to all motor vehicles until the adverse effects and threat to public safety has been eliminated.

Persons exempt from this order shall include law enforcement personnel, persons performing the official administrative functions of the Bureau of Land Management, and persons acting under specific authorizations granted by the Bureau of Land Management.

This area closure shall remain in effect until further notice.

Date: August 23, 1988.

James W. Abbott,  
 Acting Area Manager.

[FR Doc. 88-19748 Filed 8-30-88; 8:45 am]

BILLING CODE 4310-40-M

[INV-060-4321-02]

#### Battle Mountain District Advisory Council Meeting in Tonopah, Nevada

**SUMMARY:** Notice is hereby given in accordance with Public Law 94-579 and 43 CFR Part 1780 that a meeting of the Battle Mountain District Advisory Council will be held on Tuesday and Wednesday, October 4 and 5, 1988. The meeting will convene at 1:00 p.m. in the Blue Room at the Tonopah Convention Center.

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting will include:

1. Discussion of the wild horse situation in Stone Cabin Valley and a review of the University of Minnesota study.
2. Discussion of the Gilbert Creek Allotment grazing situation.
3. Field trip to Stone Cabin Valley on October 5, 1988.

The meeting is open to the public. Interested persons may make oral statements between 4:00 and 4:30 p.m. on October 4, 1988. If you wish to make an oral statement, please contact Terry L. Plummer by 4:30 p.m., September 30, 1988.

#### FOR FURTHER INFORMATION CONTACT:

Terry L. Plummer, District Manager, P.O. Box 1420, Battle Mountain Nevada 89820 or phone (702) 635-5181.

Date Signed: August 19, 1988.

Terry L. Plummer,  
 Battle Mountain, Nevada.

[FR Doc. 88-19739 Filed 8-30-88; 8:45 am]

BILLING CODE 4310-HC-M

[ID-943-08-4220-11; I-15320 et al]

#### Proposed Continuation of Withdrawal; Idaho

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management proposes that 279.25 acres of land withdrawn for Public Water Reserve Nos. 47, 66, 107 and 156, continue for an additional 20 years. The water involved would remain withdrawn and the lands would closed to surface entry, but would be opened to non-metalliferous mining through this action. The lands have been and will continue to be open to the mineral leasing laws and the location of metalliferous minerals.

**DATE:** Comments should be received by November 29, 1988.

**ADDRESS:** Comments should be sent to Idaho State Director, Bureau of Land Management, 3380 American Terrace, Boise, Idaho 83706.

#### FOR FURTHER INFORMATION CONTACT:

Larry Lievsay, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1735.

The Bureau of Land Management proposes that those portions of Public Water Reserve No. 107, created by the Executive Order, dated April 17, 1926, and further designated by Secretarial Order of Interpretation No. 169, dated August 4, 1932 and Public Water Reserve Withdrawals 47, 66, and 156, created by the Executive Orders of August 15, 1919, April 7, 1917, and

August 10, 1934, respectively, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, on the following-described land:

#### Boise Meridian, Idaho

(I-15320)

Public Water Reserve No. 156

T. 13 N., R. 24 E.,

Sec. 21, SE $\frac{1}{4}$ SW $\frac{1}{4}$ ;

Sec. 28, NE $\frac{1}{4}$ NW $\frac{1}{4}$ .

(I-15325)

Public Water Reserve No. 47

T. 13 N., R. 23 E.,

Sec. 30, lot 2, SE $\frac{1}{4}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ .

(I-15354)

Public Water Reserve No. 107

Secretarial Order of Interpretation No. 169

T. 13 N., R. 27 E.,

Sec. 4, SW $\frac{1}{4}$ SW $\frac{1}{4}$ .

(I-15593)

Public Water Reserve No. 66

T. 10 N., R. 22 E.,

Sec. 17, SE $\frac{1}{4}$ SE $\frac{1}{4}$ .

The areas described aggregate 279.25 acres in Custer, Lemhi and Owyhee Counties.

The purpose of the withdrawals is to protect the springs located on the lands for livestock water use.

The withdrawals segregate the lands from the location of non-metalliferous minerals and operation of the land laws, but not the mineral leasing laws, and withdraw the public waters involved. The lands would be opened to non-metalliferous mining location, only, through this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demands for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

Dated: August 23, 1988.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 88-19747 Filed 8-30-88; 8:45 am]

BILLING CODE 4310-GG-M



**Fish and Wildlife Service****Availability of Draft Legislative Environmental Impact Statement; National Wildlife Refuges in Alaska**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability of a draft legislative environmental impact statement on the Proposed Acquisition of Inholdings on National Wildlife Refuges in Alaska.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) has prepared, for public review, a Draft Legislative Environmental Impact Statement (LEIS) on the Proposed Acquisition of inholdings on National Wildlife Refuges in Alaska pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969. The draft statement describes five alternatives for acquiring refuge inholdings and the environmental consequences of implementing each alternative.

**DATES:** All comments and testimony, both oral and written, will be accepted until October 24, 1988, for consideration in the preparation of the final plan. Public hearings will be held in Washington, DC; Anchorage, Kodiak, Fairbanks, Bethel, Arctic Village, Kaktovik, and Galena, Alaska; during September 1988.

**ADDRESS:** Comments should be sent to Regional Director, U.S. Fish and Wildlife Service; 1011 East Tudor Road; Anchorage, Alaska 99503-6199 [Attention Ann Rappoport].

**FOR FURTHER INFORMATION CONTACT:** Ann Rappoport, Acting 1002 Project Manager; U.S. Fish and Wildlife Service; 1011 East Tudor Road; Anchorage, Alaska 99503; telephone (907) 786-3411.

**SUPPLEMENTARY INFORMATION:** A copy of the draft statement will be sent to all persons and organizations who participated in any part of the planning process, or in other types of communication with the Service. Copies of the draft statement will also be sent to Federal and State agencies, regional and village Native corporations, local governments, and other organizations and individuals who have already requested copies. A limited number of copies are available upon request from Ms. Rappoport.

Written and oral testimony will be accepted at the public hearings and will be transcribed for the official record. All comments and testimony, both oral and written, received postmarked by or prior to October 24, 1988, will be considered in the preparation of the final statement.

In addition to the issues raised by this draft LEIS, there have been indications that interested persons may wish to comment on subjects clearly outside of the scope of this draft LEIS. Additional subjects may include:

- The methodology for valuing the privately owned inholdings in the seven national wildlife refuges;
- The methodology for valuing oil and gas interests to be exchanged by the Department;
- The suitability for refuge purposes of the inholdings to be acquired;
- The adequacy of section 22(g) of the Alaska Native Claims Settlement Act (43 U.S.C. 1621(g)) which provides for the continuing application of refuge land use laws and regulations to inholdings in pre-ANCSA refuges as a substitute for acquisition; and
- The desirability of acquiring subsurface interests underlying the inholdings to be acquired.

Persons interested in commenting on issues outside of the scope of the draft LEIS may do so by separately addressing those issues and forwarding their comments to the individual designated in this notice to receive comments. Comments will be considered by the Secretary on whether the proposed exchange agreements should be modified through further negotiations or signed in their current form and then sent to Congress for approval, whether any alternatives for acquiring these lands should be adopted, or whether no action should be taken.

Copies of the draft statement are available for public review at the office of the Regional Director, at the above address, and at the following locations:

- U.S. Fish and Wildlife Division of Refuge Management; U.S. Department of the Interior Bldg., Room 2343; 18th and C Streets, NW.; Washington, DC 20240
- U.S. Fish and Wildlife Service, Refuges and Wildlife; 500 NE. Multnomah Street, Suite 1692; Portland, Oregon 97232
- U.S. Fish and Wildlife Service, Refuges and Wildlife; 500 Gold Avenue SW., Room 1306; Albuquerque, New Mexico 87103
- U.S. Fish and Wildlife Service, Refuges and Wildlife; Federal Building, Fort Snelling; Twin Cities, Minnesota 55111
- U.S. Fish and Wildlife Service, Refuges and Wildlife; Richard B. Russell Federal Bldg.; 75 Spring Street NW.; Atlanta, Georgia 30303
- U.S. Fish and Wildlife Service, Refuges and Wildlife; One Gateway Center, Suite 700; Newton Corner, Massachusetts 02158

U.S. Fish and Wildlife Service, Refuges and Wildlife; 134 Union Blvd.; P.O. Box 25486; Denver Federal Center; Denver, Colorado 80225

Date: August 26, 1988.

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 88-19841 Filed 8-30-88; 8:45 am]

BILLING CODE 4310-55-M

**National Park Service****Golden Gate National Recreation Area Advisory Commission; Meeting**

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission will be held at 7:30 p.m. (PDT) on Thursday, September 29, 1988, at Building 201, Fort Mason, San Francisco, California.

The Advisory Commission was established by Pub. L. 92-589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

- Mr. Frank Boerger, Chairman
- Ms. Amy Meyer, Vice Chair
- Mr. Ernest Ayala
- Mr. Richard Bartke
- Dr. Howard Cogswell
- Brig. Gen. John Crowley, USA (ret)
- Mr. Margot Patterson Doss
- Mr. Neil D. Eisenberg
- Mr. Jerry Friedman
- Mr. Steve Jeong
- Ms. Daphne Greene
- Ms. Gimmy Park Li
- Mr. Gary Pinkston
- Mr. Merritt Robinson
- Mr. R.H. Sciaroni
- Mr. John J. Spring
- Dr. Edgar Wayburn
- Mr. Joseph Williams

The first agenda item will be a presentation of Golden Gate National Recreation Area staff recommendations on the United States Army proposal to expand the Post Exchange at the Presidio of San Francisco, Building T-135, to provide increased retail space and a consolidation of services and activities presently found elsewhere on post. The addition will be to the west and south of the existing building. It will contain the Garden Shop from the Four Seasons Store, Building 609, which has



been demolished. The former Branch Exchange and the Four Seasons Store have been demolished for the site clearance. Total demolition is equivalent in square feet to the proposed one-story addition (26,000 square feet). An initial Army presentation of the proposal was made to the GGNRA Advisory Commission at the July 7, 1988 meeting.

The second agenda item will be a presentation by the Golden Gate Bridge District of a proposal to add approximately 6,000 square feet to the existing maintenance shop facility at the west end of the Golden Gate Bridge Toll Plaza, and to remove the temporary storage containment structures at the site.

The meeting is open to the public. Persons wishing to receive environmental documents and fact sheets for any of the above-mentioned projects should contact the office of the Staff Assistant Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or telephone (415) 556-4484.

This meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript is available after October 14, 1988. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Date: August 24, 1988.

Stanley T. Albright,

*Regional Director, Western Region.*

[FR Doc. 88-19751 Filed 8-30-88; 8:45 am]

BILLING CODE 4310-70-M

## Management Policies; Chapter 2— Criteria for Parklands; Correction

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of availability of proposed revised management policies on Criteria for Parklands with request for review and comments; correction.

**SUMMARY:** The National Park Service is correcting errors in the notice which appeared in the *Federal Register* on August 23, 1988 (53 FR 32113). The NPS is proposing revised management policies for new area studies and criteria for determining national significance. These policies, in their final form, will be incorporated in the revised National Park Service Management Policies as a part of chapter 2. The corrections are mainly minor but important editorial changes and a modification of the definition for suitability to consider that resources

may be adequately protected, represented and presented for public enjoyment by another land managing entity. The revised text as shown below should be the one commented on. The comment date has also been changed from September 23, 1988 to September 30, 1988 to allow 30 days for comment from the date of publication of this corrected notice.

**DATES:** Written comments will be accepted until September 30, 1988.

**ADDRESS:** Comments should be directed to: Chief, Office of Policy, National Park Service, P.O. Box 37127, MIB-MS1226, Washington, DC 20013-7127.

Single copies of the draft management policies may be requested from National Park Service, Office of Policy, 18th & C Streets, NW., MIB-MS1226, Washington, DC 20013-7127. Copies are available for review in the National Park Service Washington Office and all regional offices. Addresses of the Washington Office and regional offices are:

National Park Service, 18th & C Streets, NW., Main Interior Building, Room 1226, Washington, DC 20013-7127

Alaska Regional Office, National Park Service, 2525 Gambell Street, Room 107, Anchorage, AK 99503

Mid-Atlantic Regional Office, National Park Service, 143 South Third Street, Philadelphia, PA 19106

Midwest Regional Office, National Park Service, 1709 Jackson Street, Omaha, NE 68102

National Capital Parks, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242

North Atlantic Regional Office, National Park Service, 15 State Street, Boston, MA 02109-3572

Pacific Northwest Regional Office, National Park Service, 83 South King Street, Suite 212, Seattle WA 98104

Rocky Mountain Regional Office, National Park Service, 12795 West Alameda Parkway, P.O. Box 25287, Lakewood, CO 80225

Southeast Regional Office, National Park Service, 75 Spring Street, SW, Atlanta, Ga 30303

Southwest Regional Office, National Park Service, P.O. Box 728, Santa Fe, New Mexico 87504-0728

Western Regional Office, National Park Service, 450 Golden Gate Ave., Box 36063, San Francisco, CA 94102

**FOR FURTHER INFORMATION CONTACT:** Office of Policy, 202/343-4298 or 7456.

**SUPPLEMENTARY INFORMATION:** The proposed policies for studying potential additions to the national park system reflect revised criteria for national significance adopted since 1978 for National Historic Landmarks and

National Natural Landmarks. This statement updates the policy in effect since 1978 to more clearly distinguish significance considerations from questions of suitability, feasibility, and management alternatives. The proposed policy outlines four basic significance factors that apply to natural, cultural, and recreation resources and provides examples for each category of resource. This approach replaces the separate criteria for national recreation areas that appeared in the 1978 policies. The revised policy outlines criteria for new national park system units, but does not address what designation (park, monument, seashore, recreation area) would be most appropriate. Introductory material in the 1978 policy has been condensed to avoid duplication with other chapters in the new management policies. The new policy statement also includes a definition and criteria for affiliated areas.

The Service is hereby soliciting comment from any and all interested groups or individuals on these policies. We urge you to be specific as to how the policy might be changed or strengthened. All comments will be reviewed and, when appropriate, incorporated. The policies will remain on review for 30 days. The revised final policy and an explanation of how comments were addressed will be published in the *Federal Register*. These policies, in final form, will become a part of chapter 2 of the National Park Service Management Policies.

Denis P. Galvin,

*Acting Director.*

August 25, 1988.

## New Area Studies and Criteria

The National Park Service identifies nationally significant natural, cultural, and recreational resources and assists in their preservation both inside and outside the national park system. The areas managed by the National Park Service are only one part of a national inventory of special and protected areas managed by innumerable federal, state, and local agencies and the private sector. Consequently, addition to the national park system is only one of many alternatives for ensuring the preservation of significant national resources for public enjoyment and benefit. A great variety of specially designated areas, including natural landmarks, historic landmarks, wild and scenic rivers, trails, wilderness areas, areas of critical environmental concern, biosphere reserves, and recreation areas, managed by the U.S. Forest Service, Fish and Wildlife Service,



Bureau of Land Management, other federal, state, county, and local agencies, Indian tribes, and the private sector, complete the broader national inventory.

As directed by Congress, the National Park Service will study and monitor areas to determine if they are nationally significant and if so, whether they have potential for inclusion in the national park system. Planning for the future of the national park system is guided by a framework of themes representing all the aspects of America's natural and cultural heritage. Additions to the system recognize new understanding of natural resources, national recreational trends, and the continuing progress of history. New area studies may be initiated within the Service or may be conducted in response to requests from Congress, other federal, state, or local agencies, or the private sector. The Service will review all proposals and provide advice about planning, studies, or other appropriate actions. Where formal new area studies are appropriate, the Service will establish priorities and conduct studies as funds are available.

To be eligible for favorable consideration as a unit of the national park system, an area must (1) possess nationally significant natural, cultural, or recreational resources, (2) be a suitable and feasible addition to the system, and (3) require direct Park Service management instead of alternative protection by other agencies or the private sector. These criteria are designed to ensure that the national park system includes only outstanding examples of the nation's natural, cultural, and recreational resources. They also recognize that inclusion in the national park system is not the only option for preserving the nation's outstanding resources.

#### *Criteria for National Significance*

A natural, cultural, or recreational resource will be considered nationally significant if it meets all of the following criteria:

It is an outstanding example of a particular type of resource.

It possesses exceptional value or quality in illustrating or interpreting the natural or cultural themes of our nation's heritage.

It offers opportunities for recreation, public use, and enjoyment or for scientific study superior to other resources of the same type.

It retains integrity as a true, accurate, and relatively unspoiled example of a resource.

Examples of natural resources that may be nationally significant include:

An outstanding site that illustrates the characteristics of a landform or biotic area that is still widespread;

A rare remnant natural landscape or biotic area of a type that was once widespread but is now vanishing due to human settlement and development;

A landform or biotic area that has always been extremely uncommon in the region or nation;

A site possessing exceptional diversity of ecological components (species, communities, habitats) or geologic features (landforms, observable manifestations of geologic processes);

A site containing biotic species or communities whose natural distribution at that location makes them unusual (a relatively large population at the limit of its range, or an isolated population);

A site harboring a concentrated population of a rare plant or animal species, particularly one officially recognized as threatened or endangered;

A critical refuge necessary for the continued survival of a species;

A site containing a rare or unusually abundant fossil deposits;

An area with outstanding scenic qualities, such as dramatic topographic features, unusual contrasts in landforms or vegetation, spectacular vistas, or other landscape features;

A site that is an invaluable ecological or geological benchmark due to an extensive and long-term record of research and scientific discovery.

Nationally significant cultural resources include districts, sites, buildings, structures, or objects that possess exceptional value or quality in illustrating or interpreting our heritage and that possess a high degree of integrity of location, design, setting, materials, workmanship, feeling, and association. Examples of cultural resources that may be nationally significant include those that—

Are associated with events that have made a significant contribution to and are identified with, or that outstandingly represent, the broad national patterns of United States history and from which an understanding and appreciation of those patterns may be gained;

Are associated importantly with the lives of persons nationally significant in the history of the United States;

Represent some great idea or ideal of the American people;

Embody the distinguishing characteristics of an architectural type specimen, exceptionally valuable for study of a period, style, or method of construction or that represent a significant, distinctive, and exceptional entity whose components may lack individual distinction;

Are composed of integral parts of the environment not sufficiently significant by reason of historical association or artistic merit to warrant individual recognition but collectively compose an entity of exceptional historical or artistic significance, or outstandingly commemorate or illustrate a way of life or culture;

Have yielded or may be likely to yield information of major scientific importance by revealing new cultures or by shedding light upon periods of occupation over large areas of the United States.

Ordinarily cemeteries, birthplaces, graves of historic figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, and properties that have achieved significance within the past 50 years are not considered appropriate for addition to the national park system unless they have transcendent importance, unless they possess inherent architectural or artistic significance, or unless no other site associated with that theme remains.

Examples of recreation resources that may be nationally significant include—

A natural or cultural feature providing a special setting for a variety of recreational activities different from those available at the local or regional level;

A spacious area located near a major population center with the potential to provide exceptional recreational opportunities and to serve visitors from around the nation rather than solely from the immediate vicinity;

An area that protects a unique recreation resource that is scarce and disappearing in a multi-state region, such as an outstanding recreational river, a unique maritime environment or coastline, or a unique scenic area;

A unique combination of natural, cultural, and recreational resources that collectively offer outstanding opportunities for public use and enjoyment even through each feature might not individually be considered nationally significant.

#### *Suitability and Feasibility*

To be suitable for addition to the national park system an area must represent a natural/cultural theme or type of recreational resource that is not already adequately represented in the national park system unless such an area is adequately represented, protected, and presented for public enjoyment by another land managing entity. Adequacy or representation will



be determined on a case-by-case basis by evaluating the proposed addition in relation to other units in the national park system.

To be feasible as a new unit of the national park system an area must be of sufficient size and appropriate configuration to ensure long-term protection of resources and to accommodate public use, and it must have potential for efficient administration at a reasonable cost. Important feasibility factors include landownership, acquisition costs, access, threats to the resource, and staff or development requirements.

#### *Management Alternatives*

Studies of potential new park units will evaluate an appropriate range of management alternatives, which may include—

Continued management by states, local governments, Indian tribes, the private sector, or other federal agencies;

Technical or financial assistance to others through established NPS programs or special projects;

Management by others as a designated national natural landmark, national historic landmark, national wild and scenic river, national trail, biosphere reserve, state or local park, or other specially designated and protected area;

Cooperative management, including designation as an affiliated area.

New additions to the national park system will not usually be recommended if other arrangements can provide adequate protection for the resource and opportunities for public enjoyment.

#### *Affiliated Areas*

Congress and the Secretary of the Interior have given special recognition to a small group of areas that are affiliated with but not technically part of the national park system. These affiliated areas are protected and managed by other organizations and agencies, but they have some formal financial or legal relationship with the National Park Service, often including technical or financial assistance beyond what is normally available to national landmarks.

To be eligible for affiliated status, areas must meet the same criteria for national significance as national landmarks or potential units of the national park system. However, affiliated areas are not necessarily suitable or feasible as new units of the system. Designation as an affiliated area is a management alternative appropriate for resources that can be most effectively protected by others through a cooperative arrangement with the

National Park Service. Although the National Park Service does not have direct management responsibility for affiliated areas, the Service usually enters into an agreement to assure that management and operations meet Park Service standards.

[FR Doc. 88-19752 Filed 8-30-88; 8:45 am]

BILLING CODE 4310-70-M

#### **Minerals Management Service**

[FES 88-26]

#### **Gulf of Mexico; Availability of the Final Environmental Impact Statement Regarding Proposed Central and Western Gulf of Mexico Lease Sales 118 and 122**

The Minerals Management Service has prepared a final Environmental Impact Statement (EIS) relating to proposed 1989 Outer Continental Shelf (OCS) oil and gas lease sales in the central and western Gulf of Mexico. Proposed Central Gulf of Mexico Sale 118 and Western Gulf of Mexico Sale 122 will offer for lease approximately 33.5 million acres and 27.9 million acres, respectively. Single copies of the final EIS can be obtained from the Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394.

Copies of the final EIS are available for review at the following libraries: Austin Public Library, 402 West Ninth Street, Austin, Texas; Texas State Library, United States Documents Section, 1200 Brazos Street, Austin, Texas; University of Texas, Lyndon B. Johnson School of Public Affairs Library, 2313 Red River Street, Austin, Texas; University of Texas, General Libraries/ Documents, 21st and Speedway Streets, Austin, Texas; Houston Public Library, 500 McKinney Street, Houston, Texas; University of Houston—University Park, Library Documents Unit, 4800 Calhoun Boulevard, Houston, Texas; Dallas Public Library, 1513 Young Street, Dallas, Texas; Brazoria County Library, 410 Brazoport Boulevard, Freeport, Texas; LaRatama Library, 505 Mesquite Street, Corpus Christi, Texas; Texas Southwest College Library, 1825 May Street, Brownsville, Texas; Rosenberg Library, 2310 Sealy Street, Galveston, Texas; Texas A & M University, Evans Library, Documents Division, Spence and Lubbock Streets, College Station, Texas; The University of Texas at Dallas Library, 2601 North Floyd Road, Richardson, Texas; Lamar University, Gray Library, Virginia Avenue, Beaumont, Texas; Texas Tech

University Library, United States Documents, 18th and Boston Streets, Lubbock, Texas; Texas Tech University, Law Library, 1802 Hartford Street, Lubbock, Texas; East Texas State University Library, 2600 Neal Street, Commerce, Texas; Stephen F. Austin State University, Steen Library, Wilson Drive, Nacogdoches, Texas; Baylor University Library, Documents Department, 13125 Third Street, Waco, Texas; University of Texas—Arlington, Library Documents, 701 South Cooper Street, Arlington, Texas; University of Texas at El Paso, Library Documents Division, Wiggins Road and University Avenue, El Paso, Texas; Abilene Christian University, Margaret and Herman Brown Library, 1600 Campus Court, Abilene, Texas; University of Texas at San Antonio Library, John Peace Boulevard, San Antonio, Texas; Tulane University, Howard Tilton Memorial Library, Documents Department, 7001 Freret Street, New Orleans, Louisiana; New Orleans Public Library, 219 Loyola Avenue, New Orleans, Louisiana; Louisiana Tech University, Prescott Memorial Library, Everett Street, Ruston, Louisiana; Louisiana State Library, 760 Riverside, Baton Rouge, Louisiana; Lafayette Public Library, 301 W. Congress, Lafayette, Louisiana; Calcasieu Parish Library, Downtown Branch, 411 Pujo Street, Lake Charles, Louisiana; Nicholls State Library, Nicholls State University, Leighton Drive, Thibodaux, Louisiana; Harrison County Library, 14th and 21st Avenue, Gulfport, Mississippi; Auburn University at Montgomery Library, Taylor Road, Montgomery, Alabama; Montgomery Public Library, 445 South Lawrence Street, Montgomery, Alabama; University of Alabama Libraries, Government Documents, 809 University Boulevard East, Tuscaloosa, Alabama; Mobile Public Library, 701 Government Street, Mobile, Alabama; University of Florida Libraries, Documents Department, University Avenue, Gainesville, Florida; University of Florida, Holland Law Center Library, Legal Information Center, Southwest 25th Street and 2nd Avenue, Gainesville, Florida; Florida A & M University, Coleman Memorial Library, Martin Luther King Boulevard, Tallahassee, Florida; Leon County Public Library, 127 North Monroe Street, Tallahassee, Florida; Florida Atlantic University Library, Division of Public Documents, 20th Street, Boca Raton, Florida; University of Miami Library, Government Publications, 4600 Rickenbacker Causeway, Miami, Florida; St. Petersburg Public Library, 3745 Ninth Avenue North, St. Petersburg,



Florida; West Florida Regional Library, 200 West Gregory Street, Pensacola, Florida; Northwest Regional Library System, 25 West Government Street, Panama City, Florida; Lee County Library, 3355 Fowler Street, Fort Myers, Florida; Charlotte-Glades Regional Library System, 2280 Northwest Aaron Street, Port Charlotte, Florida; Tampa-Hillsborough County Public Library System, 800 North Ashley Street, Tampa, Florida.

William D. Battenberg,

Director, Minerals Management Service.

Approved:

Date: August 26, 1988.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 88-19037 Filed 8-30-88; 8:45 am]

BILLING CODE 4320-MR-M

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

#### Advisory Committee on Voluntary Foreign Aid; Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA) on Tuesday, September 27th in conjunction with the release of their report on "PVO Effectiveness."

Date: September 27, 1988

Time: 9:30 a.m.-11:20 a.m.

Place: The National Press Club, 14th and F Streets, NW., Washington, DC 20045.

The meeting is free and open to the public. However, notification by September 21, 1988 through the Advisory Committee Headquarters is required.

Persons wishing to attend the meeting must call (703) 875-4407, or write, not later than September 21. The address is: The Advisory Committee on Voluntary Foreign Aid, Room 305, SA-8, Agency for International Development, Washington, DC 20523

Date: August 22, 1988.

Thomas A. McKay,

Deputy Assistant Administrator for Private and Voluntary Cooperation, Bureau for Food for Peace and Voluntary Assistance.

[FR Doc. 88-19732 Filed 8-30-88; 8:45 am]

BILLING CODE 6116-01-M

### Housing Guaranty Program; Investment Opportunity

The Agency for International Development (A.I.D.) is considering the

authorization of the guaranty of a loan to the Government of Jamaica as part of A.I.D.'s development assistance program. The proceeds of this loan would be used to support a shelter program for low-income families in Jamaica. The Government of Jamaica has requested A.I.D. to advise eligible investors that Jamaica is seeking expressions of interest for an amount to be borrowed of up to \$10 million plus the dollar amount to capitalize the first three years of interest payments. The name and address of the Borrower's representative to be contacted by interested U.S. lenders of investment bankers, the amount of the loan and project number are indicated below:

#### Government of Jamaica

Project: 532-HG-013—\$10 Million plus 3 years capitalized interest.

Attention: (1) Harry Milner, Financial Secretary, Ministry of Finance and Planning, 30 National Heroes Circle, P.O. Box 512, Kingston 4, Jamaica. Telex No.: 2447 Finance. Telefax No.: 809/924-9291. Telephone No.: 809/922-3388 or 8601.

(2) Audley Sailsman, Ministry of Finance and Planning, 30 National Heroes Circle, P.O. Box 512, Kingston 4, Jamaica. Telex No.: 2447 Finance. Telefax No.: 809/924-9291. Telephone No.: 809/922-8784.

Investors should contact the borrower as soon as possible during the week of September 5, 1988 and indicate their interest in providing financing for the Housing guaranty Program. Following discussions with interested investors, the Borrower's representative will come to New York to finalize procedures to be followed in selecting a loan proposal. The Borrower intends to be in New York during the week of September 12, 1988. The intention of the Borrower is to close the loan and obtain disbursement by September 30, 1988.

Expressions of interest should also be sent to the following:

Michael G. Kitay/Barton Veret, Agency for International Development, GC/PRE, Room 3328 N.S., Washington, DC 20523. Telephone: 202/647-8235. Telex No.: 892703 AID WSA. Telefax No.: 202/647-4958 (preferred communication).

Mr. Lane Lee Smith, Assistant Director/Caribbean, RHUDO/Kingston, USAID/Kingston, American Embassy, Washington, DC 20523-3210 (street address: 6B Oxford Road, Kingston, Jamaica). Telephone No.: 809/929-8572 or 3125. Telefax No.: 809/929-3752.

For your information the Borrower is currently considering the following terms:

1. Amount: U.S. \$10 million.

2. Maturity: Up to 30 years

3. Interest Rate: Option of either fixed or variable rate or variable with Borrower's right to convert to fixed rate.

4. Grace Period on Principal: Ten years with repayment amortizing gradually over the remaining life of the loan.

5. Capitalization of Interest: Capitalization of interest for first three years.

6. Prepayment: Expressions should include the possibility of partial or total prepayment of the loan by the Borrower, if pricing is not materially affected.

7. Notes: Preference to limit number of noteholders.

8. Fees: Payable at closing from proceeds of loan.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. The lender and A.I.D. would enter into a Contract of Guaranty covering the loan. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans would be guaranteed by A.I.D. The A.I.D. guaranty would be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from: Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 315, SA-18 Center Building, Washington, DC 20523. Telephone: 703/875-4808.



Date: August 29, 1988.

Fredrik A. Hansen,  
Deputy Director, Office of Housing and Urban  
Programs, Agency for International  
Development.

[FR Doc. 88-19945 Filed 8-30-88; 10:17 am]

BILLING CODE 6116-01-M

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-275]

### Certain Nonwoven Gas Filter Elements; Issuance of Limited Exclusion Order

AGENCY: U.S. International Trade  
Commission.

ACTION: Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order under 19 U.S.C. 1337(d) to prevent the unauthorized importation into the United States of certain nonwoven gas filter elements that infringe claims of 1, 2, 3, 6, 7, or 8 of U.S. Letters Patent 4,056,375 ("the '375 patent").

**ADDRESSES:** Copies of the limited exclusion order, the Commission opinion on remedy, the public interest, and bonding, and all other nonconfidential documents on the record of the above-captioned investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone 202-252-1000.

**FOR FURTHER INFORMATION CONTACT:** P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1061. Hearing-impaired persons are advised that information on the aforesaid limited exclusion order and the subject investigation can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

**SUPPLEMENTARY INFORMATION:** As a result of the subject investigation, the Commission determined that the unauthorized U.S. importation and sale of the subject nonwoven gas filter elements violates section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). See 52 FR 32182 (Aug. 26, 1987), as amended by 52 FR 44234 (Nov. 18, 1987); 53 FR 12200 (Apr. 13, 1988); 53 FR 27408 (June 20, 1988). The Commission accordingly

solicited written submissions from the parties to the investigation, other Federal agencies, and interested members of the public on the issues of remedy, the public interest, and bonding. See 53 FR 27408 (June 20, 1988). The only submissions the Commission received were those filed by the parties. After considering the parties' submissions and examining the record developed during the investigation, the Commission determined that the appropriate remedy for the section 337 violations found in this investigation consists of a limited exclusion order prohibiting the importation of Dutch respondent Filtrair B.V.'s infringing gas filter elements for the remaining term of the '375 patent, except under license from the patent holder. (The Commission majority determined to deny complainant's request for an order directing domestic respondent APB Corporation to cease and desist from marketing, distributing, selling, or offering for sale in the United States its existing inventory of Filtrair B.V.'s imported infringing nonwoven gas filter elements.<sup>1</sup> The Commission also determined that the public interest considerations listed in subsection (d) of section 337 do not preclude issuance of a limited exclusion order and that while the order is under review by the President pursuant to subsection (g) of section 337, the excluded articles will be entitled to enter the United States under a bond in the amount of 12 percent of the articles' entered value.

The authority for the aforesaid Commission determinations and the limited exclusion order is contained in subsections (d) and (j) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(d) and 19 U.S.C. 1337(j)), as amended by the Omnibus Trade and Competitiveness Act of 1988 and in interim §§ 210.57 and 210.58(a) of Part 210 of the Commission's Rules of Practice and Procedure (which will be published in the Federal Register on or about August 29, 1988) (interim 19 CFR 210.57 and 210.58(a)).

Issued: August 26, 1988.

By order of the Commission.

Kenneth R. Mason,  
Secretary.

[FR Doc. 88-19849 Filed 8-30-88; 8:45 am]

BILLING CODE 7020-02-M

<sup>1</sup> Commissioner Liebelier dissented on this issue. She would have issued a cease and desist order in addition to the limited exclusion order to prevent the respondents from selling the infringing nonwoven gas filter elements they currently have in their inventory.

## INTERSTATE COMMERCE COMMISSION

[I.C.C. Order No. P-97]

### Passenger Train Operation; Elgin, Joliet and Eastern Railway Co. and Wisconsin Central Ltd.

To: Elgin, Joliet and Eastern Railway  
Company and Wisconsin Central Ltd.

*It appearing,* that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between Chicago, Illinois and Seattle, Washington. The operation of these trains requires the use of the tracks and other facilities of Soo Line Railroad Company (SL). A portion of the SL tracks near Elm Grove, Wisconsin, are temporarily out of service because of a derailment. An alternate route is available via the Joliet and Eastern Railway Company and Wisconsin Central Ltd. between Rondout, Illinois and Duplainville, Wisconsin.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

*It is ordered,*

(a) Pursuant to the authority vested in me by order of the Commission decided January 13, 1986, and the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), the Elgin, Joliet and Eastern Railway Company (EJE) and Wisconsin Central Ltd. (WC) are directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between Rondout, Illinois and a connection with Soo Line Railroad Company (SL) at Duplainville, Wisconsin.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority



conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 4:45 p.m. (EDT), August 10, 1988.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m. (EDT), August 13, 1988, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon the Joliet and Eastern Railway Company and Wisconsin Central Ltd., the Association of American Railroads—Transportation Division, The American Short Line Railroad Association, and upon the National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC, August 10, 1988.

By Bernard Gaillard, agent.

Noreta R. McGee,

Secretary.

[FR Doc. 88-19817 Filed 8-30-88; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Order Pursuant to the Clean Air Act; A-1 Disposal Corp., et al

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that on August 9, 1988 proposed four consent decrees in *United States v. A-1 Disposal Corporation, et al.*, Civil Action No. 86 C 9107, were lodged with the United States District Court for the Northern District of Illinois. The proposed consent decrees require the defendants to pay EPA \$162,568 to reimburse EPA for costs incurred in responding to releases and threatened releases of hazardous substances at the Alburn Incinerator site in Chicago, Illinois.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. A-1 Disposal Corporation, et al.*, D.J. Ref. 90-11-3-97A.

The proposed consent decrees may be examined at the office of the United States Attorney, Everett McKinley

Dirksen Bldg., Rm. 1500 S., 219 S. Dearborn St., Chicago, Illinois 60604 and the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the consent decrees may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, Washington, DC 20530. A copy of the proposed consent decrees may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$2.70 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-19740 Filed 8-30-88; 8:45 am]

BILLING CODE 4410-01-M

### Consent Decree in Action To Enjoin Discharge of Water Pollutants; Fansteel, Inc.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States v. Fansteel, Inc.*, Civil Action No. 88-471C, was lodged with the United States District Court for the Eastern District of Oklahoma on August 17, 1988. The consent decree establishes a compliance schedule for the metal processing facility, located at Number Ten Tantalum Place, Muskogee, Oklahoma and owned and operated by Fansteel, Inc. ("Fansteel"), to bring the facility into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.*, Fansteel's National Pollutant Discharge Elimination System Permit, and the applicable regulations relating to the discharge of pollutants. The consent decree also requires payment of a civil penalty of \$99,000. The consent decree calls for Fansteel to achieve compliance by January 31, 1990.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Ave. NW., Washington, DC 20530 and should refer to *United States v. Fansteel, Inc.*, D.J. Ref. No. 90-5-1-1-2921.

The consent decree may be examined at the office of the United States

Attorney, Eastern District of Oklahoma, 333 Federal Courthouse and Office Building, Muskogee, Oklahoma 74401 and at the Region VI office of the Environmental Protection Agency, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202. A copy may be obtained by mail by written request to the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice. In requesting a copy, please enclose a check in the amount of \$1.80 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-19741 Filed 8-30-88; 8:45 am]

BILLING CODE 4410-01-M

### Lodging of Consent Decree; Hardinsburg, KY, et al.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on July 22, 1988, a proposed consent decree in *United States v. City of Hardinsburg, Kentucky, et al.*, C 88-0500-L-A, was lodged with the United States District Court for the Western District of Kentucky. The action was brought pursuant to the Clean Water Act, 33 U.S.C. 1251 *et seq.* and alleged violations by the City of its National Pollutant Discharge Elimination System (NPDES) permit. The complaint prayed for civil penalties and injunctive relief.

The consent decree requires the City to pay a civil penalty of \$6,000, to achieve final compliance with its NPDES permit by April 1, 1990, to initiate and complete necessary construction in accordance with a fixed schedule and to pay stipulated penalties for violations of the schedule.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC. All comments should refer to *United States v. City of Hardinsburg, D.O.J. Ref. 90-5-1-1-3086*.

The proposed consent decree may be examined at the office of the United States Attorney, Bank of Louisville Building, 10th Floor, Louisville, Kentucky 40202 and at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. Copies of the



proposed decree can be obtained by mail from the Environmental Enforcement Section, Land & Natural Resources Division, United States Department of Justice, Washington, DC 20530. Any request for a copy should be accompanied by a check in the amount of \$1.70 for copying costs payable to the "Treasurer of the United States."

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-19733 Filed 8-30-88; 8:45 am]

BILLING CODE 4410-01-M

#### Lodging of Consent Decree, Hodgenville, KY, et al.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on July 22, 1988, a proposed consent decree in *United States v. City of Hodgenville, Kentucky, et al.*, C 88-0499 LA, was lodged with the United States District Court for the Western District of Kentucky. The action was brought pursuant to the Clean Water Act, 33 U.S.C. 1251 et seq. and alleged violations by the City of its National Pollutant Discharge Elimination System (NPDES) permit. The complaint prayed for civil penalties and injunctive relief.

The consent decree requires the City to pay a civil penalty of \$10,000, to achieve final compliance with its NPDES permit by April 1, 1990, to initiate and complete necessary construction in accordance with a fixed schedule and to pay stipulated penalties for violations of the schedule.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land & Natural Resources Division, Department of Justice, Washington, DC. All comments should refer to *United States v. City of Hodgenville, D.O.J. Ref. 90-5-1-1-3087*.

The proposed consent decree may be examined at the office of the United States Attorney Bank of Louisville Building, 10th Floor, Louisville, Kentucky 40202 and at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. Copies of the proposed decree can be obtained by mail from the Environmental Enforcement Section, Land & Natural Resources Division, United States Department of Justice, Washington, DC 20530. Any request for a copy should be accompanied by a check in the amount

of \$1.70 for copying costs payable to the "Treasurer of the United States."

Roger J. Marzulla,

Assistant Attorney General Land & Natural Resources Division.

[FR Doc. 88-19734 Filed 8-30-88; 8:45 am]

BILLING CODE 4410-10-M

#### Lodging of Consent Decree; Kevil, KY, et al.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on July 22, 1988, a proposed consent decree in *United States v. City of Kevil, Kentucky, et al.*, C 88-0172 P(J), was lodged with the United States District Court for the Western District of Kentucky. The action was brought pursuant to the Clean Water Act, 33 U.S.C. 1251 et seq. and alleged violations by the City of its National Pollutant Discharge Elimination System (NPDES) permit. The complaint prayed for civil penalties and injunctive relief.

The consent decree requires the City to pay a civil penalty of \$2,750, to achieve final compliance with its NPDES permit by July 1, 1990, to initiate and complete necessary construction in accordance with a fixed schedule and to pay stipulated penalties for violations of the schedule.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land & Natural Resources Division, Department of Justice, Washington, DC. All comments should refer to *United States v. City of Kevil D.O.J. Ref. 90-5-1-1-3085*.

The proposed consent decree may be examined at the office of the United States Attorney, Bank of Louisville Building, 10th Floor, Louisville, Kentucky 40202 and at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. Copies of the proposed decree can be obtained by mail from the Environmental Enforcement Section, Land & Natural Resources Division, United States Department of Justice, Washington, DC 20530. Any request for a copy should be accompanied by a check in the amount of \$1.70 for copying costs payable to the "Treasurer of the United States."

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-19735 Filed 8-30-88; 8:45 am]

BILLING CODE 4410-10-M

#### Lodging of Consent Decree; Seymour Recycling Corp., et al.

In accordance with the Policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. Seymour Recycling Corp., et al.*, Civil Action No. IP-80-457-C, was lodged with the United States District Court for the Southern District of Indiana, on August 18, 1988. The action was filed pursuant to sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9606, 9607, section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973, and section 311 of the Clean Water Act, 33 U.S.C. 1321. The complaint sought injunctive relief and the recovery of costs incurred by the United States in connection with federal clean-up activities at the site of the former Seymour Recycling Corporation facility in Seymour, Indiana.

The Consent Decree provides that the settling defendants will fund and implement the remedial action for the permanent cleanup of the Site. The remedial action plan includes treatments for soil and groundwater contamination. The Consent Decree also provides that the settling defendants will pay \$6.5 million to the United States for costs incurred by the federal government in conducting investigatory, removal, and remedial activities at the Site.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530. All comments should refer to *United States v. Seymour Recycling Corp., et al.*, DOJ Reference No. 62-26S-19.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 274 U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the proposed Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the



Environmental Enforcement Section, Land and Natural Resources Division of the U.S. Department of Justice. The proposed Consent Decree package consists of a 195-page Consent Decree and 372 pages of Exhibits. You may request a copy of the Consent Decree with or without exhibits. Please specify in the letter of request whether or not exhibits are requested. A request for a copy of the proposed Consent Decree with exhibits should be accompanied by a check in the amount of \$56.70 (ten cents (10¢) per page copying costs) payable to the "United States Treasurer." A request for a copy of the proposed Consent Decree without exhibits should be accompanied by a check in the amount of \$19.50 payable to the "United States Treasurer."

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-19742 Filed 8-30-88; 8:45 am]

BILLING CODE 4410-01-M

#### **Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act; State of Washington v. Time Oil Co.**

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 18, 1988, a proposed consent decree in *United States and State of Washington v. Time Oil Co.*, Civil Action Nos. C85-478TB and C86-990T (consolidated), was lodged with the United States District Court for the Western District of Washington. The Complaint filed by the United States alleged that defendant Time Oil Co. was the owner or operator of the Time Oil facility, from which there have been releases of hazardous substances into the environment, which releases have caused the United States to incur response costs. The complaint sought the reimbursement of the money that EPA has spent and will spend in remedying the Time Oil property, the contaminated groundwater beneath the property, and the contaminated groundwater in the City of Tacoma's wellfield.

The consent decree requires the defendant to pay \$8.5 million to be divided among the United States, the State of Washington, and the City of Tacoma, in proportion to the costs that each has incurred and is anticipated to incur.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be

addressed to the Chief, Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044-7611, and should refer to *United States and State of Washington v. Time Oil Co.*, D.J. Ref. 90-11-2-129A.

The proposed consent decree may be examined at the Office of the United States Attorney, Western District of Washington, 3600 Seafirst Fifth Avenue, Plaza, 36th floor, Seattle, Washington 98104, and at the Region X office of the Environmental Protection Agency, 1200 Sixth Avenue, 12th floor, Seattle, Washington 98101. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, N.W., Washington, D.C. A copy of the proposed consent decree may be obtained in person from the above address or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044-7611. When requesting a copy, please refer to *United States and State of Washington v. Time Oil Co.*, D.J. Ref. 90-11-2-129A, and enclose a check in the amount of \$1.60 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-19743 Filed 8-30-88; 8:45 am]

BILLING CODE 4410-01-M

#### **United States Trustee Program; Notice of Certification, Sixth Circuit**

The Attorney General, pursuant to section 303 of the Bankruptcy Judges, United States Trustees, and Family Farmer Act of 1986, Pub. L. No. 99-554, 100 Stat. 388 (1986), hereby certifies to the United States Court of Appeals for the Sixth Circuit on this date that, in the region specified in paragraph 581(a)(8) of title 28, United States Code, composed of the federal judicial districts for the States of Tennessee and Kentucky, the amendments made by section 113 and subtitle A of title II of the Act and section 1930(a)(6) of title 28, United States Code, will apply 30 days after this date as to all cases commenced under chapters 7, 11, 12, or 13 of title 11, United States Code, on or after November 26, 1986. The amendments will also apply in cases commenced prior to November 26, 1986, one year after this certification, unless a

final report and account of the administration of the estate required under section 704 of title 11, United States Code, has been filed, or a plan has been confirmed under section 1129, 1225, or 1325 of title 11.

These amendments implement the United States Trustee system in the region and impose quarterly fees in chapter 11 cases commenced on or after November 26, 1986 beginning on the thirtieth day after the date of this certification. The implementation of the United States Trustee system and the imposition of quarterly fees in those chapter 11 cases commenced prior to November 26, 1986, in which a plan has not been confirmed, will become effective one year after the date of this certification.

The United States Trustee, having been appointed pursuant to 28 U.S.C. 581(a), is responsible for implementing the amendments made by the Act in the region hereby certified.

Date: August 8, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88-19744 Filed 8-30-88; 8:45 am]

BILLING CODE 4410-01-M

#### **Antitrust Division**

##### **National Cooperative Research; the Industry/University Cooperative Research Center for Simulation and Design Optimization of Mechanical Systems**

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Industry/University Cooperative Research Center for Simulation and Design Optimization of Mechanical Systems, located at the University of Iowa, has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties to the venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Industry/University Cooperative Research Center for Simulation and Design Optimization of Mechanical Systems and its general areas of planned activities, are given below.

The parties to the Industry/University Cooperative Research Center for



Simulation and Design Optimization of Mechanical Systems are as follows:

Alliant Computer Systems  
Apollo Computer, Inc.  
Boeing Computer Services  
CADSI, Inc.  
Case/IH  
Caterpillar, Inc.  
Contraves Goertz Group  
Eastman Kodak Company  
Evans & Sutherland  
FMC Corporation  
CPC General Motors Corporation  
Intergraph Corporation  
Silicon Graphics

The objectives of the Industry/University Cooperative Research Center for Simulation and Design Optimization of Mechanically Systems are as follows:

To sponsor research and development that focuses on methods for simulation and design optimization of dynamic and structural performance of mechanical systems, and on the development of advanced software into a data base and command processor system that will serve as a national research software system to permit research teams to carry out their work in an interdisciplinary simulation and design optimization environment.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-19745 Filed 8-30-88; 8:45 am]

BILLING CODE 4410-01-M

### Proposed Termination of Final Judgment; American Body & Trailer, Inc., et al.

Notice is hereby given that Great Dane Trailers, Inc. ("Great Dane") has filed with the United States District Court for the Western District of Oklahoma a motion to terminate the final judgment in *United States v. American Body and Trailer, Inc., Utility Trailer Manufacturing Company, and Great Dane Trailers, Inc.*; and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the judgment, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The complaint in this case (filed on June 16, 1958) alleged that the defendants engaged in a combination and conspiracy to allocate territories and fix prices for the sale of trailers in violation of section 1 of the Sherman Act, 15 U.S.C. 1. The judgment (also entered on June 16, 1958) enjoined the defendants from allocating territories or markets and fixing prices for the sale of trailers; referring inquiries from prospective customers to another trailer

manufacturer; and exchanging with any trailer manufacturer any element of defendant's sale price of trailers. The judgment also enjoins defendants from agreeing not to utilize distributors in any territory or location and from restricting the territories in which distributors may sell trailers.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgment would serve the public interest. Copies of the complaint and final judgment, Great Dane's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7233, United States Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone 202-633-2481), and at the Office of the Clerk of the United States District Court for the Western District of Oklahoma, 3210 United States Courthouse, Oklahoma City, Oklahoma 73102. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within sixty days, and will be filed with the court. Comments should be addressed to P. Terry Lubeck, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 555 4th Street, NW., Judiciary Center Building, Room 10-437, Washington, DC 20001 (telephone 202/724-7966).

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 88-19746 Filed 8-30-88; 8:45 am]

BILLING CODE 4410-01-M

### Drug Enforcement Administration

[Docket No. 88-1]

#### Edwin Dale Moses, M.D.; Revocation of Registration

On December 3, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Edwin Dale Moses, M.D. (Respondent), 4974 North Holt, Fresno, California 93705, proposing to revoke his DEA Certificate of Registration AM8594120. The statutory basis for the Order to Show Cause was

the revocation to practice medicine by the California Board of Medical Quality Assurance on March 20, 1987. This action renders Respondent without authority to prescribe, administer, dispense or otherwise handle controlled substances in the State of California.

By letter dated December 26, 1987, Respondent requested a hearing on the issues raised in the Order to Show Cause. The matter was docketed before Administrative Law Judge Francis L. Young. On January 25, 1988, Government counsel filed a motion for summary disposition. Judge Young provided Respondent until February 29, 1988, to file a response to the Government's motion for summary disposition. Upon realizing that the Government's motion and Judge Young's memorandum had been sent to an incorrect address, Respondent was permitted until June 15, 1988, to file a response to the Government's motion for summary disposition. Respondent filed no response.

On August 5, 1988, Administrative Law Judge Francis L. Young issued a memorandum and order terminating the proceedings. The Administrative Law Judge concluded that since Respondent has presented no defense or objection to the Government's motion for summary disposition, no contest is presented between the parties calling for an adjudicatory decision. All proceedings before the Administrative Law Judge were concluded so that the matter could be presented to the Administrator for entry of a final order pursuant to 21 CFR 1301.54 (d) and (e).

The Administrator finds that on October 27, 28, 29, and 30, 1986, and January 6, 1987, hearings were conducted before a California Administrative Law Judge regarding an accusation made by the California Board of Medical Quality Assurance concerning Respondent's license to practice medicine in the State of California. The state judge found that Respondent prescribed controlled substances to patients without good faith medical examination and medical indication. The Administrative Law Judge also found that Respondent had sexual relations with patients under his care, and that he obtained Preludin, a Schedule II stimulant controlled substance for his own use using deceptive means. The California Board of Medical Quality Assurance adopted the findings and recommendation of the Administrative Law Judge that Respondent's medical license be revoked. By order dated February 18, 1987, the medical board revoked



Respondent's California medical license effective March 20, 1987.

The Controlled Substances Act, at 21 U.S.C. 823(f), requires that in order to be registered with DEA as a practitioner, an individual must be "authorized to dispense \* \* \* controlled substances under the laws of the State in which he practices." DEA does not have the statutory authority under the Controlled Substances Act to maintain a registration issued to a practitioner who is not authorized by the state in which he practices to handle controlled substances. The Administrator of DEA has consistently so held. See *Emerson Emery, M.D.*, Docket No. 85-46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85-5, 50 FR 34208 (1985); *Agostino Carlucci, M.D.*, Docket No. 82-20, 49 FR 33184 (1984). The Administrator finds that Respondent's lack of a license to practice medicine in California constitutes lack of authorization to prescribe, administer, dispense or otherwise handle controlled substances in that state. Respondent is, therefore, not authorized to maintain his DEA Certificate of Registration. The Administrator concludes that Respondent's DEA registration must be revoked.

Accordingly, the Administrator of the DEA, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AM8594120, previously issued to Edwin Dale Moses, M.D., be, and it hereby is, revoked. Any outstanding applications for registration submitted by Respondent are denied.

This order is effective September 30, 1988.

Dated: August 25, 1988.

John C. Lawn,  
Administrator.

[FR Doc. 88-19750 Filed 8-30-88; 8:45 am]

BILLING CODE 4410-09-M

#### **Cecil Smith, M.D.; Revocation of Registration**

On March 31, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Cecil Smith, M.D., 272 State Road, N. Dartmouth, Massachusetts 02747. The Order to Show Cause sought to deny Dr. Smith's application for a DEA Certificate of Registration dated March 19, 1987, based upon his lack of authorization to handle controlled substances in Massachusetts, and the previous surrender of a DEA Certificate of Registration in April 1986 based upon

prescribing of controlled substances to known drug abusers.

The Order to Show Cause was received by Dr. Smith on April 6, 1988. More than 30 days have passed since the order to show cause was received, and there has been no response. The Administrator finds that Dr. Smith has waived his opportunity for a hearing and issues this final order based upon the findings of fact and conclusions of law as hereinafter set forth. 21 CFR 1301.54(d) and 1301.54(e).

The Administrator finds that Dr. Smith is not licensed to handle controlled substances by the Department of Public Health for the Commonwealth of Massachusetts. This resulted from Dr. Smith's surrender of his DEA Certificate of Registration in Schedules 2 and 2N in 1980, and in Schedules 3, 3N, 4 and 5 in 1986. Dr. Smith has not applied to the Massachusetts Department of Public Health for reinstatement of his state license. The Administrator of DEA has consistently held that DEA does not have the authority to issue a registration to an individual who is not authorized to handle controlled substances by the state or jurisdiction in which he seeks to practice. See *Emerson Emery, M.D.*, Docket No. 85-46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85-8, 50 FR 34208 (1985); *Agostino Carlucci, M.D.*, Docket No. 82-20, 49 FR 33184 (1984). The Administrator concludes that there is a lawful basis to deny Dr. Smith's application based on lack of state authorization alone.

The Administrator notes, however, that Dr. Smith surrendered Schedules 2 and 2N of his DEA registration on September 18, 1980, following an investigation of his prescribing of various Schedule 2 narcotic drugs. The Massachusetts State police and DEA had received several complaints about Dr. Smith's excessive prescribing of narcotics. When Dr. Smith was questioned about his prescribing practices he agreed to surrender the Schedule 2 portion of his DEA registration. Dr. Smith retained his DEA registration in Schedules 3, 3N, 4 and 5.

An investigation conducted in April and May of 1986, revealed that Dr. Smith was continuing to prescribe controlled substances to individuals who he knew were drug abusers. Several area pharmacists were interviewed. Many of these pharmacists would not fill prescriptions for controlled substances written by Dr. Smith because of the questionable nature of the prescriptions. On April 24, 1986, Dr. Smith was interviewed by DEA investigators and Massachusetts State Troopers. The doctor agreed that he was writing

prescriptions for controlled substances to drug addicts. At that time he surrendered his DEA Certificate of Registration. The Administrator finds that in addition to lacking authorization from the State of Massachusetts to handle controlled substances, Dr. Smith has history of prescribing controlled substances to drug abusers, and that his application for registration must be denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for a DEA Certificate of Registration submitted by Cecil Smith, M.D., on March 19, 1987, be, and it hereby is, denied. Any other outstanding applications for registration submitted by Dr. Smith are also denied.

This order is effective August 31, 1988.

Dated: August 25, 1988.

John C. Lawn,  
Administrator.

[FR Doc. 88-19749 Filed 8-30-88; 8:45am]

BILLING CODE 4410-09-M

#### **DEPARTMENT OF LABOR**

##### **Employment and Training Administration**

##### **Job Training Partnership Act: Notice of Establishment of JTPA Native American Programs' Advisory Committee**

In accordance with the provisions of the Federal Advisory Committee Act, and after consultation with the General Services Administration, the Secretary of Labor has determined that the establishment of the Job Training Partnership (JTPA) Native American Programs' Advisory Committee is in the public interest in regard to the consultation responsibilities imposed on the Department under Title IV, section 401, of JTPA.

The Committee will provide advice to the Assistant Secretary for Employment and Training on rules, regulations, and performance standards specifically and solely for Native American programs authorized under Title IV, section 401, of JTPA. The Assistant Secretary seeks this advice, as one of several means of consultation with the Indian and other Native American community, in order to develop such rules, regulations, and performance standards. The Committee will provide the Assistant Secretary with a summary report of the advice offered on these matters within 30 days of its scheduled meetings.



As Paragraph 401(h)(1) of JTPA directs, the Committee shall be comprised of representatives of the Indian and other Native American community. The Committee will include, but not limited to, JTPA section 401, grantees and members of national organizations representing the Indian and other Native American community. An equitable geographic distribution will be sought in addition to appropriate representation of both tribes and nontribal organizations. The members shall not be compensated and shall not be deemed to be employees of the United States.

The Committee will function solely as an advisory body, not a policy formulating or decision making body, and in compliance with the provisions of the Federal Advisory Committee Act. Its charter has been filed under the Act concurrently with this publication.

Interested persons are invited to submit comments regarding the establishment of the JTPA Native American Programs' Advisory Committee. Such comments should be addressed to: Mr. Paul A. Mayrand, Director, Office of Special Targeted Programs, U.S. Department of Labor, Employment & Training Administration, Room N-4641, 200 Constitution Ave., NW., Washington, DC 20210, Telephone: (202) 535-0500.

Signed at Washington, DC, this 26th day of August, 1988.

Ann McLaughlin,  
Secretary of Labor.

[FR Doc. 88-19815 Filed 8-30-88; 8:45 am]

BILLING CODE 4510-30-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meeting of the Museum Advisory Panel to the National Council on the Arts

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Challenge II Section) to the National Council on the Arts will be held on September 19-20, 1988, from 9:00 a.m.-5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the

determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations,  
National Endowment for the Arts.

August 25, 1988.

[FR Doc. 88-19828 Filed 8-30-88; 8:45 am]

BILLING CODE 7537-01-M

### Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Jazz Presenters Section) to the National Council on the Arts will be held on September 14, 1988, from 9:00 a.m.-5:00 p.m.; on September 15, 1988, from 9:00 a.m.-6:00 p.m.; and on September 16, 1988 from 9:00 a.m.-5:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 16, from 1:00-4:00 p.m. The topics for discussion will include guidelines and policy issues.

The remaining sessions of this meeting on September 14, from 9:00 a.m.-5:00 p.m.; on September 15, from 9:00 a.m.-6:00 p.m.; and on September 16, from 9:00 a.m.-1:00 p.m., and from 4:00 p.m.-5:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts 1100 Pennsylvania Avenue, NW., Washington 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

August 23, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations,  
National Endowment for the Arts.

[FR Doc. 88-19737 Filed 8-30-88; 8:45 am]

BILLING CODE 7537-01-M

### Meeting of the Visual Arts Advisory Panel to the National Council on the Arts

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Challenge II Section) to the National Council on the Arts will be held on September 21, 1988, from 9:00 a.m.-5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965 as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

August 25, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations,  
National Endowment for the Arts.

[FR Doc. 88-19829 Filed 8-30-88; 8:45 am]

BILLING CODE 7537-01-M

## NATIONAL SCIENCE FOUNDATION

### Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Pub. L. 95-541.



**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

**FOR FURTHER INFORMATION CONTACT:**

Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

**SUPPLEMENTARY INFORMATION:** On June 21, 1988, the National Science Foundation published a notice in the Federal Register of permit applications received. Permits were issued to the following individuals on August 18, 1988: Paul K. Dayton, J. Ward Testa, Gary D. Miller, Wayne Trivelpiece, and Douglas Wartok.

Charles E. Myers,

Permit Office, Division of Polar Programs,  
[FR Doc. 88-19736 Filed 8-30-88; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-320]

### GPU Nuclear Corp.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 55.59, Operators' Licenses, Requalification relative to Facility Operating License No. DPR-73, issued to GPU Nuclear Corporation (the licensee), for the Three Mile Island Nuclear Station Unit 2 (TMI-2), located in Londonderry Township, Dauphin County, Pennsylvania. By Order for Modification of License, dated July 20, 1979, the licensee's authority to operate the facility was suspended and the licensee's authority was limited to maintenance of the facility in the present shutdown cooling mode (44 FR 45271). By further Order of the Director, Office of Nuclear Reactor Regulation, dated February 11, 1980, a new set of formal license requirements was imposed to reflect the post-accident condition of the facility and to assure the continued maintenance of the current safe, stable, long-term cooling condition of the facility (45 FR 11292). The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

## Environmental Assessment

### Identification of Proposed Action

The actions being considered by the Commission are exemptions from requirements of 10 CFR 55.59 pertaining to the Licensed Operator Requalification Program. The licensee has requested, in a letter dated December 28, 1987, that the requirements of 10 CFR 55.59(c)(2), subsections (iv) and (v) and 10 CFR 55.59(c)(3)(i), items (A) through (AA) be eliminated. Specifically, 10 CFR 55.59(c)(2), subsections (iv) and (v) require that the licensee's operators' requalification program include lectures covering plant protection systems and engineered safety systems, respectively. Items (A) through (AA) of 10 CFR 55.59(c)(3)(i) require that the operators' requalification program include, as part of on-the-job training, control manipulations for an identified list of conventional reactor evolutions.

### The Need for the Proposed Action

TMI-2 is currently in a post-accident, cold shutdown, long-term recovery mode, with sufficient decay heat removal assured by direct heat loss from the reactor coolant system (RCS) to the reactor building atmosphere. The present unconventional configuration of the TMI-2 plant does not allow the conventional evolutions normal to an operating facility. As such, the staff does not consider the evolutions listed in 10 CFR 55.59(c)(3)(i) items (A) through (AA) applicable for TMI-2. Since conventional events are not applicable for TMI-2, conventional plant protection systems and engineered safety systems are not required by TMI-2 and are in fact disabled.

Therefore, training lectures on conventional plant protection systems and engineered safety systems would be irrelevant to TMI-2. Similarly, conventional manipulations, such listed in 10 CFR 55.59(c)(3)(i) items (A) through (AA) would not be applicable to the present TMI-2 configuration. As such, exercises attempting these manipulations would not be relevant to the TMI-2 operating staff.

### Environmental Impact of the Proposed Action

The staff has evaluated the proposed exemptions and concludes that in light of the current and future condition of the facility described above, there are no significant radiological or nonradiological impacts to the environment as a result of this action. The exemptions remove the specific training requirements which are no longer applicable to the TMI-2 configuration.

## Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Programmatic Environmental Impact Statement for TMI-2, dated March 1981.

### Agencies and Persons Consulted

The NRC staff reviewed the licensee's request. No other agencies or persons were consulted.

### Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action see the letter from GPUN dated December 28, 1987 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and the State Library of Pennsylvania, Government Publications Section, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Dated at Rockville, Maryland, this 23rd day of August, 1988.

For the Nuclear Regulatory Commission,

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects I-II.

[FR Doc. 88-19824 Filed 8-30-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

### Toledo Edison Co.; and The Cleveland Electric Illuminating Co., Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3, issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

## Environmental Assessment

### Identification of Proposed Action

The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specification (TS's) relating to response times and surveillance requirements for the Main Steam Isolation Valves, Safety Features System, and Steam and Feedwater



Rupture Control System. The proposed changes would ensure consistent closure response time requirements throughout the Appendix A TS's, would delete redundant response time requirements, and would clarify the meaning of the response time requirement.

#### *The Need for the Proposed Action*

The proposed changes are needed to make the MSIV closure time requirements consistent throughout the technical specifications under the assumptions applied in the analyses in the Updated Safety Analysis Report (USAR). The changes also would eliminate requirements where they are not necessary to satisfy the assumptions applied in the USAR.

The MSIV's are installed in both main-steam lines between the steam generators (SG's) and the turbine, and provide isolation of the steam generators when required. Automatic closure of these valves is through the Safety Features Actuation System (SFAS) or the Steam and Feedwater Rupture Control System (SFRCS). SFAS will initiate MSIV closure upon a high-high containment pressure signal, and SFRCS will initiate closure upon either low steam pressure, high SG level, or a high pressure differential between the SG and main feedwater line.

Operability and closure time requirements for the MSIV's are specified in four sections of the Technical Specifications; however the closure and response times stated are not consistent between sections because the requirements were developed for certain sections independently of the others. Therefore, the proposed amendment would specify a consistent closure requirement where closure times are necessary to be specified. Where it is not necessary to specify such a requirement for the MSIV's, nonapplicability would be indicated.

The Commission has evaluated the environmental impact of the proposed amendment and has determined that post-accident radiological releases would not be greater than previously determined. The proposed amendment does not otherwise affect radiological plant effluents during normal operation. In addition, the proposed amendment does not have any influence upon occupational radiation exposure.

Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed amendment.

With regard to potential nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact.

Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the *Federal Register* on March 23, 1988 (53 FR 9527). No request for hearing or petition for leave to intervene was filed following this notice.

#### *Alternatives to the Proposed Action*

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts attributable to this facility and would only result in continuing the specification of inconsistent requirements for closure and response times for the MSIV's.

#### *Alternative Use of Resources*

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the Davis-Besse facility.

#### *Agencies and Persons Consulted*

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

#### *Finding of No-Significant Impact*

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated July 27, 1987, and supplemental information submitted March 31, 1988 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 25th day of August, 1988.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,  
Acting Director, Project Directorate III-3,  
Division of Reactor Projects—III, IV, V and  
Special Projects.

[FR Doc. 88-19825 Filed 8-30-88; 8:45-am]

BILLING CODE 7590-01-M)

[Docket No. 50-346]

#### **Toledo Edison Co. and The Cleveland Electric Illuminating Co.; Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3, issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

#### **Environmental Assessment**

##### *Identification of Proposed Action*

The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TS's) relating to Steam and Feedwater Rupture Control System Instrumentation Trip Setpoints, in accordance with Toledo Edison Company's application dated December 7, 1987. Specifically, the proposed amendment would:

(1) Reduce the Steam Generator low-level Steam and Feedwater Rupture Control System trip setpoint from not less than 20 inches to not less than 16.4 inches.

(2) Clarify the datum for measuring the Steam Generator level.

##### *The Need for the Proposed Action*

The proposed changes are needed to support the determination made in the Davis-Besse Course of Action document that the margin between the Steam and Feedwater Rupture Control System low level trip setpoint and the Integrated Control System low level limit should be increased.

##### *Environmental Impacts of the Proposed Action*

The Davis-Besse Steam and Feedwater Rupture Control System is designed to mitigate the consequences of a main steam line or main feedwater line break. The low level trip setpoint initiates the Steam and Feedwater Rupture Control System when insufficient feedwater is present in the Steam Generator. Lowering the setpoint



will decrease the likelihood of an inadvertent Steam and Feedwater Rupture Control System actuation during operation at or near the Integrated Control System low level limit.

The Commission has evaluated the environmental impact of the proposed amendment and has determined that post-accident radiological releases would not be greater than previously determined. The proposed amendment does not otherwise affect radiological effluents during normal operation. In addition, the proposed amendment does not have any influence upon occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed amendment.

With regard to potential nonradiological impacts, the proposed amendment involves a change in a safety system trip setpoint. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on May 3, 1988 (53 FR 15759). No request for hearing or petition for leave to intervene was filed following this notice.

#### *Alternative to the Proposed Action*

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated. The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts attributable to this facility and would result in increased probability of spurious Steam and Feedwater Rupture Control System actuations and potential transients.

#### *Alternative Use of Resources*

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the Davis-Besse facility.

#### *Agencies and Persons Consulted*

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

#### *Finding of No Significant Impact*

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated December 7, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 25th day of August, 1988.

For the Nuclear Regulatory Commission.  
**Timothy G. Colburn,**

*Acting Director, Project Directorate III-3,  
Division of Reactor Projects—III, IV, V and  
Special Projects.*

[FR Doc. 88-19826 Filed 8-30-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

#### **Toledo Edison Co. et al.; Issuance of Amendment to Facility Operating License**

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 117 to Facility Operating License No. NPF-3, issued to The Toledo Edison Company and the Cleveland Electric Illuminating Company (the licensee), which revised the Technical Specifications for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility) located in Ottawa County, Ohio. The amendment was effective as of the date of its issuance.

The amendment revised the Technical Specifications related to the main steam safety valve setpoints and ASME Code requirements.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on May 24, 1988 (53 FR 18631). No request for hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action see (1) the application for amendment dated March 4, as supplemented May 4, 1988, (2) Amendment No. 117 to License No. NPF-3, (3) the Commission's related Safety Evaluation dated August 24, 1988, and (4) the Environmental Assessment dated July 19, 1988 (53 FR 28081). All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 24th day of August 1988.

For the Nuclear Regulatory Commission.

**Albert W. De Agazio, Sr.,**

*Project Manager, Project Directorate III-3,  
Division of Reactor Projects—III, IV, V and  
Special Projects.*

[FR Doc. 88-19827 Filed 8-30-88; 8:45 am]

BILLING CODE 7590-01-M

#### **OFFICE OF PERSONNEL MANAGEMENT**

##### **Request for Approval of SF 3108; Submitted to OMB for Clearance**

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a new information collection from the public. SF 3108, Application to Make Service Credit Payment for Civilian Service, is completed by employees, former employees, and Members of Congress who wish to pay for any period of civilian service performed before 1989 and for which no Federal Employees Retirement System (FERS) deductions were previously made. These individuals may also pay for any period of civilian service during which retirement deductions were withheld from pay and refunded to the person based on an application filed before they became covered by FERS. Annual use by these individuals is estimated at 1,000 forms. The total annual burden is 500 hours. For copies of this proposal, call C. Ronald



Trueworthy, Agency Clearance Officer, on (202) 632-7714.

**DATES:** Comments on this proposal should be received on or before September 12, 1988.

**ADDRESSES:** Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415,

and

Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3235, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:**

James L. Bryson; (202) 632-5472.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 88-19855 Filed 8-30-88; 8:45 am]

BILLING CODE 6325-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26029; SR-BSE-87-1]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Partially Approving Proposed Rule Change

#### I. Introduction

The Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Commission on January 30, 1987, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> a proposed rule change that would establish an automated communication, order routing and execution system for use by Exchange member organizations. The proposed system, known as "BEACON",<sup>2</sup> is a

small order execution system similar in many ways to systems already in place on other regional stock exchanges such as the Midwest Stock Exchange's ("MSE") "MAX" system, the Pacific Stock Exchange's ("PSE") "SCOREX" system, and the Philadelphia Stock Exchange's ("Phlx") "PACE" system.

As proposed by the Exchange, BEACON would route orders in eligible stocks from member firms to the BSE floor. For stocks traded on the Intermarket Trading System ("ITS"),<sup>3</sup> BEACON would guarantee either an automatic or manual execution of up to either 599 or 1299 shares, depending on the classification of the stock, at the BEACON quotation. To accomplish this, a BEACON order electronically entered into the system by a member firm is transmitted to a BSE specialist's post where it is displayed on the specialist's terminal together with the automatically assigned BEACON quote at which the order would be automatically executed. The order is displayed on the specialists's terminal for up to 15 seconds to permit the specialist to intervene in the automatic execution of the order should he wish to improve on the BEACON quotation. Where the specialist does not intervene, the order automatically will be executed at the BEACON quote.

#### II. Description of Proposed Rule

The BSE's proposed BEACON rules, described below, define the specific procedures for the entry and executions of orders in the system. These include how orders are entered into the system, the types of orders that may be entered, how orders will be executed, how the execution price will be determined, and how the system may be used to route orders.

Section 1 of the proposed rule provides that BEACON is available to BSE member organizations and to foreign stock exchanges with which BSE has established a trading link.<sup>4</sup> All

<sup>3</sup> ITS is a communications system designed to facilitate trading among competing markets by providing each market with order routing capabilities based on current quotation information. Specifically, ITS links the participating markets (American Stock Exchange, BSE, Cincinnati Stock Exchange, MSE, New York Stock Exchange, PSE, Phlx, and the National Association of Securities Dealers) and provides facilities and procedures for: (1) Display of composite quotation information from each participating market so that brokers are able to determine the best bid and offer available from any participating market for a multiply traded security; (2) efficient routing of orders and administrative messages between participating markets; and (3) participation, under certain conditions, by members of all participating markets in opening transactions in those markets, as of June 30, 1988, 1,639 stocks were traded over ITS.

<sup>4</sup> The Exchange currently has a trading link with the Montreal Stock Exchange. The BSE has

issues traded on the Exchange will be eligible for BEACON but only agency orders (orders executed on behalf of a member organization's client) will be eligible for automatic execution.

Section 2 provides that BEACON will permit offers to be routed to specialists or to floor brokers.<sup>5</sup> The system also will allow floor brokers to transmit orders to specialists. Under subparagraph (c), member firms may send market and marketable limit orders to BSE over the system in size parameters established by the BSE.<sup>6</sup> Once orders are routed to the specialist, they may be executed either automatically (if eligible) or manually.

Execution parameters for BEACON are set out in Section 3 of the proposed rule. Market and marketable limit orders in issues traded over ITS transmitted to the specialist prior to the BSE's opening will be provided the opening price on the primary market on which it is traded. The primary market opening price usually will be the NYSE or Amex opening price for the stock. The only exception to applying the primary market opening price to an opening transaction would be where the member firm entering the order asks, instead, for the order to be provided the consolidated opening price.

Market and marketable limit orders entered after the opening will receive an execution price based upon the BEACON quotation.<sup>7</sup> As noted previously, these orders, when transmitted to the specialist for execution, will be displayed on the specialist's video display terminal for up to 15 seconds (so called "exposure period") to allow the specialist to improve on the BEACON quotation that

informed the Commission, however, that it has no plans to make BEACON available for transactions over the Montreal linkage. Should the BSE subsequently decide that it wants to make access to BEACON available over the Montreal linkage, a proposed rule change would have to be submitted to the Commission for consideration under the requirements of section 19(b) of the Act and Rule 19b-4 thereunder.

<sup>5</sup> A floor broker receiving such an order would bring the order to the trading crowd for execution.

<sup>6</sup> The BSE has informed the Commission that there are currently no size limits for orders routed on BEACON and that it has no plans to adopt such limits. Telephone conversation between George Mann, Senior Vice President and General Counsel, BSE, and Howard Kramer, Assistant Director, Division of Market Regulation, on June 30, 1988. Automatic execution limits for BEACON are discussed *infra* at 5.

<sup>7</sup> The BEACON quotation, defined in section 5(c) of the proposed rule, is the primary market quotation price, except that, where bids and offers from other markets are displayed that are superior to the BEACON price, the BEACON order will be executed at that superior price up to the size of the quote displayed.

<sup>1</sup> 15 U.S.C. 78s(b).

<sup>2</sup> The term "BEACON" is an acronym for Boston Exchange Automated Communications Order-routing Network. The initial set of rules proposed for BEACON (File No. SR-BSE-87-1) was noticed in Securities Exchange Act Release No. 24187, March 6, 1987; 52 FR 86892. No comments were received on this proposal. Subsequently, the Commission received amendments to the BSE's proposed BEACON rules. These amendments were noticed in Securities Exchange Act Release No. 14690, July 9, 1987; 52 FR 26612. On December 8, 1987, June 10, 1988, July 1, 1988, and August 10, 1988, the Commission received additional amendments to the proposed BEACON rules. These amendments were not separately noticed by the Commission.



was automatically determined when the system received the order. Certain types of orders entered on BEACON always would be manually executed. These include cross orders entered in the system; nonmarketable limit orders; orders that are "stopped"; and orders entered prior to opening, which are executed at the primary market opening price.

The circumstances under which orders entered on BEACON are eligible for automatic execution are set out in section 5 of the proposed rule.<sup>8</sup> The system automatically will execute all market and marketable limit orders in ITS issues up to 1,299 shares for Tier I stocks and 599 shares for Tier II stocks.<sup>9</sup> This section also permits specialists to provide guaranteed automatic execution of 2,500 shares on specific stocks.<sup>10</sup> Automatic execution guarantee levels for BEACON orders will be published in BEACON and in hard copy. Guarantee levels in excess of 2,500 shares may be made by arrangement between a specialist and a specific member organization. These guarantees will not be published in BEACON unless requested by the specialist.

Market orders that would be executed outside the primary market price range for the day will be "stopped" and will be executed at the BEACON quotation or better as subsequent trades occur on the consolidated tape. An order that has been "stopped" must be executed by the close of trading.

### III. Discussion

Section 6(b)(5) of the Act provides that the rules of an exchange must be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing

information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest." \* \* \* The Commission has examined closely the proposed rule for the BSE's BEACON system and has concluded that it is consistent with the requirements of the Act, particularly section 6(b)(5). Accordingly, the Commission has determined that it is appropriate to permit the BSE to proceed with implementation and operation of BEACON for a 6 month trial period.

As discussed previously, the proposed BEACON system is similar in many respects to automatic execution systems currently in operation on the MSE, PSE, and Phlx. These systems are all designed to receive small orders electronically from member firms and route them to the appropriate specialist for automatic or manual execution. These systems provide the primary means of handling the vast majority of small orders executed on these regional exchanges.

Currently, the BSE is virtually unique among the regional exchanges because it only has manual systems for the routing and execution of small orders. BEACON is a key element in the BSE's overall effort to automate a substantial portion of its operations. The Exchange's development of BEACON represents a major improvement for the BSE in terms of the speed and efficiency with which it can process and execute retail orders and provide reports of executed trades. BEACON, once it is fully operational, will interface with the BSE's BASE system,<sup>11</sup> a computerized back office system that currently processes all orders executed on the Exchange floor. Once the BEACON and BASE interface is completed, BASE will be able to generate a report immediately confirming the execution of a BEACON order, including the number of shares and the execution price, and transmit it to the member firm that enter the order. The new system will also be able to provide BSE specialists with continuous update of their position, average costs, concentrations (short or large), and a computerized limit order book.

On July 15, 1988, the Commission gave approval to the BSE to proceed with the initial stages of the implementation of BEACON.<sup>12</sup> The Commission's order

allowed the Exchange to bring up to 20 stocks on to BEACON but provided that only market orders could be entered on BEACON for execution during that period. The order stated that the Commission intended to closely review results of operational tests on the system as the Exchange added stocks and connected more specialist posts and member firms to BEACON. In addition, the order stated that the BSE would submit results of stress tests on the system to demonstrate that BEACON has the capacity to handle transaction and order volume levels similar to those encountered by the Exchange during the October 1987 market break without experiencing significant order queues or delays in execution.

The Commission has received and reviewed the preliminary test results from the initial implementation stages of BEACON. From the data provided by the Exchange and discussions with BSE officials, the Commission is satisfied with the results from the initial implementation phase of BEACON. In addition, the BSE has provided the Commission with the results of a simulated traffic stress test.<sup>13</sup> This test was conducted by SIAC and designed to test the performance of vendors and other market participants such as the BSE to receive output from the consolidated transaction and quotation lines for equities and options. The BEACON system adequately handled the sustained output message traffic from SIAC.

On the basis of BEACON's initial implementation phase, the Commission has concluded that it is appropriate to permit the BSE to proceed with implementation of BEACON up to full scale operational levels for a six month trial period. During this trial period the Commission will continue to review closely the BSE's operational test results as more stocks, specialists, and member firms are brought on to the system. Once the system is fully operational test results as more stocks, specialists, and member firms are brought on to the system. Once the system is fully operational BSE should be able to provide the Commission with stress test data to ensure that BEACON has the capacity to handle order and transaction levels like those BSE encountered in the October 1987 market break without experiencing significant queues or execution delays.

<sup>8</sup> As noted previously, automatic execution guarantees under BEACON are available to agency orders only.

<sup>9</sup> Subparagraph (b) of section 5 provides that all ITS issues will be deemed Tier I stocks. Tier II stocks will be comprised of exceptions from Tier I. Those exceptions may be requested by specialists who must submit a statement to the BSE's Market Performance Committee that would set forth the specific reasons that would cause Tier I classification of the stock to be burdensome (e.g., a high priced, lightly traded stock).

<sup>10</sup> The Exchange currently has an execution guarantee under Chapter II, section 33 of the BSE Rules. Under this provision, BSE specialists guarantee execution on all agency orders from 100 up to 1,299 shares in all issues traded through ITS registered to a BSE member specialist. For the 100 most actively traded stocks reported to the consolidated tape, BSE specialists must guarantee execution on all agency orders of up to 2,500 shares. Market orders filled under this guarantee must be filled on the basis of the best Consolidated Quotation System ("CQS") bid or offer or better.

<sup>11</sup> "BASE" is an acronym for Brokerage Accounting Systems Element.

<sup>12</sup> Securities Exchange Act Release No. 25918, July 15, 1988, 53 FR 27584.

<sup>13</sup> See letter from George Mann, Senior Vice President and General Counsel, BSE, to Howard Kramer, Assistant Director, Division of Market Regulation, dated July 12, 1988.



Accordingly, the Commission has determined that the BSE may proceed with implementation of BEACON up to full scale operational levels, operating under the procedures outlined in the proposed BEACON rule, as amended, for a six month trial period.

In view of the above, the Commission concludes that a six month trial period for implementation of the BSE's proposed BEACON system is reasonable and is consistent with the requirements of the Act, particularly section 6(b)(5).

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change be, and hereby is, approved with the limitations cited above.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 25, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-19610 Filed 8-30-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26030; File No. SR-GSCC-88-1]

**Self-Regulatory Organizations; Government Securities Clearing Corporation; Filing and Immediate Effectiveness of Proposed Rule Change Relating to an amendment to the Shareholder's Agreement of Government Securities Clearing Corporation ("GSCC")**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 11, 1988 GSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The text of the proposed rule change may be examined at the places specified in Item IV below.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

**A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a) On May 5, 1988, the Securities and Exchange Commission approved the registration of Government Securities Clearing Corporation ("GSCC") as a clearing agency. On May 20, 1988, GSCC closed its offering of Class A and Class B common stock of GSCC. As part of that offering, a Shareholder's Agreement, as amended by Amendment No. 1, was required to be entered into by the Shareholders.

The Amendment makes certain technical changes to the allocation and class of director seats, the method of nomination, election and replacement of directors, and the allocation of residual loss and annual cap for Brokers. In addition, the Amendment sets forth requirements for amending the Shareholder's Agreement or the Certificate of Incorporation, and for changing GSCC's business from that of a registered clearing agency.

(b) The proposed rule change ("Amendment") provides for a fair representation of GSCC Shareholders and participants in the selection of its directors and administration of its affairs. It also clarifies the allocation of residual losses and enables GSCC to better protect itself against losses. Therefore, the proposed rule change will protect investors and the public interest and is consistent with the requirements of the Securities Exchange Act of 1934, as amended ("the Act").

**B. Self-Regulatory Organization's Statement on Burden on Competition.**

GSCC does not perceive that the proposed rule change will have an impact or impose a burden on competition.

**C. Self-Regulatory Organization's Statement on the Proposed Rule Change Received from Members, Participants, or Others.**

All GSCC Shareholders have signed the amendment.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action.**

The foregoing rule change has become effective, pursuant to section 19(b)(3)(A)

of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the purposes of the Securities Exchange Act of 1934.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making a written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 540 Fifth Street, NW., Washington, DC. Copies of such filings will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 21, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

August 25, 1988.

[FR Doc. 88-19808 Filed 8-30-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26025; File No. SR-MBS-88-7, MBS-88-9, and MBS-88-11]

**Self-Regulatory Organizations; MBS Clearing Corporation; Order Temporarily Approving Proposed Rule Changes**

On April 11, 1988, the MBS Clearing Corporation ("MBSCC") filed with the Commission three proposed rule changes (File Nos. SR-MBS-88-7, MBS-88-9, and MBS-88-11) under section 19(b) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> The proposals would

<sup>1</sup> 15 U.S.C. 78s(b)(1).



amend various MBSCC Depository Division rules including those pertaining to participant accounts, transfers of mortgage-backed securities, the MBSCC participant fund, and the MBSCC certificate withdrawal policy. The Commission published notice of the proposals in the Federal Register on May 11, 1988.<sup>2</sup>

The Commission preliminarily believes that the proposals are consistent with the Act and is approving the proposals on a temporary basis. The Commission believes that the proposals are designed appropriately to clarify MBSCC's rules and to strengthen MBSCC's procedures, thereby enhancing MBSCC's ability to safeguard securities and funds and promote prompt and accurate clearance and settlement. The Commission, however, intends to continue to analyze the proposals and to discuss with MBSCC the actual operation of the proposals and the need for any refinements or enhancements to the proposals. For those reasons, the Commission is temporarily approving the proposals through September 30, 1988.

It is therefore ordered, pursuant to section 19(b) of the Act, that MBSCC's proposed rule changes be, and thereby are approved temporarily through September 30, 1988.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 24, 1988.

Jonathan G. Katz,  
Secretary.

[FR Doc. 88-19811 Filed 8-30-88; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 34-26033; File No. SR-NASD-88-27]

**Self-Regulatory Organizations;  
National Association of Securities  
Dealers, Inc.; Order Approving  
Proposed Rule Change Relating to  
Inclusion of Qualification as Limited  
Representative-Corporate Securities  
as Alternative Prerequisite for  
Qualification as Registered Options  
Principal and Registered Options  
Representative**

The National Association of Securities Dealers, Inc. ("NASD") submitted a proposed rule change on July 1, 1988, pursuant to section 19(b)(1) of the Securities Act of 1934 ("Act") and Rule 19b-4 thereunder to amend Schedule C of the NASD By-Laws to permit

qualification as a Limited Representative-Corporate Securities to serve as an alternative prerequisite for qualifying as a Registered Options Representative or a Registered Options Principal.

Notice of the proposed rule change together with the substance of the terms of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 25919, July 15, 1988) and by publication in the Federal Register (53 FR 27589, July 21, 1988). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change, SR-NASD-88-27, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: August 25, 1988.

Jonathan G. Katz,  
Secretary.

[FR Doc. 88-19813 Filed 8-30-88; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 34-26031; File No. SR-NSCC-88-4]

**Self-Regulatory Organizations;  
National Securities Clearing  
Corporation; Notice of Filing of a  
Proposed Rule Change; Relating to an  
Amendment to National Securities  
Clearing Corporation's ("NSCC") Rules  
Concerning Mutual Fund Membership**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 20, 1988 NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's  
Statement of the Terms of Proposed  
Rule Change**

The proposed rule change would amend NSCC's Rules.

**II. Self-Regulatory Organization's  
Statement of the Purpose of, and  
Statutory Basis for, the Proposed Rule  
Change**

A. On October 14, 1987, NSCC filed a proposed rule change concerning the Mutual Fund Settlement, Entry and Registration Verification ("Fund/Serv") Service, (NSCC-87-12).

The purpose of NSCC-87-12 was to establish a special limited category of membership for broker-dealers who use only Fund/Serv, and to formulate the method by which NSCC calculates Fund/Serv Clearing Fund Requirements.

Included in NSCC 87-12 were certain technical changes to NSCC Rule 4 (Clearing Fund) to clarify the use of deposits made in respect of the Fund/Serv Service.

The purpose of the proposed rule change is to make further technical clarifications to Rule 4 regarding Fund/Serv deposits and to change the references throughout the rules from "Fund/Serv Member" to "Fund Member".

The proposed rule change clarifies the use of the Clearing Fund and therefore will enable NSCC to better protect itself against losses. The proposed rule change will ultimately provide protection to investors and public interest and is therefore consistent with the requirements of the Securities Exchange Act of 1934, as amended, ("the Act").

B. *Self-Regulatory Organization's Statement on the Burden on Competition.* NSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

C. *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others.* While comments on the proposed rule change have not been solicited or received, Participants were notified by Important Notice. NSCC will notify the Securities and Exchange Commission of any written comments received by NSCC.

**III. Date of Effectiveness of the  
Proposed Rule Change and Timing for  
Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

<sup>2</sup> Securities Exchange Act Release Nos. 25660 (May 4, 1988) 53 FR 18812; 25662 (May 4, 1988) 53 FR 18808; 25659 (May 4, 1988) 53 FR 18818.



(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be approved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to NCSS-88-4 and should be submitted by September 21, 1988. For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 25, 1988.

Jonathan G. Katz,  
Secretary.

[FR Doc. 88-19812 Filed 8-30-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24704]

#### Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 25, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s)

should submit their views in writing by September 19, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### Appalachian Power Company (70-5503)

Appalachian Power Company ("Appalachian") an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a post-effective amendment to its application-declaration pursuant to section 9(a), 10, and 12(d) of the Act and Rule 44(b)(3) thereunder.

By Commission order dated December 10, 1974 (HCAR No. 18703), Appalachian was authorized to enter an agreement of sale ("Agreement") with the Industrial Development Authority of Russell County, Virginia ("Authority") concerning the financing of pollution control facilities ("Facilities") at Appalachian's Glen Lynn and Clinch River plants. Under the Agreement the Authority is to issue and sell its pollution control revenue bonds ("Revenue Bonds"), in one or more series, the proceeds from which sales are to be deposited by the Authority with the trustee ("Trustee") under the indenture ("Indenture") entered into between the Authority and the Trustee pursuant to which Indenture the Revenue Bonds are issued and secured. The proceeds will then be applied to the payment of the costs of construction of the Facilities, originally estimated at \$45 million or, in the case of proceeds from the sale of refunding bonds, to the payment of principal, premium (if any) and/or interest on Revenue Bonds to be refunded. Appalachian conveyed an undivided interest in a portion of the Facilities to the Authority, which portion the Authority sold to Appalachian under an installment sales arrangement requiring Appalachian to pay as the purchase price semi-annual installments in such an amount (together with other monies held by the Trustee under the Indenture for the purpose) as to enable

the Authority to pay, when due, the interest and principal on the Revenue Bonds. Jurisdiction was reserved in the order of December 10, 1974, with respect to the payment of the purchase price of the Facilities by installment payments insofar as such payments were affected by the interest rates of the Revenue Bonds to be issued and sold by the Authority.

By orders dated December 27, 1974, December 17, 1975, November 14, 1979, November 21, 1980 and February 20, 1981 (HCAR Nos. 18736, 19303, 21295, 21802 and 21924), such jurisdiction was released concerning the sales of Revenue Bonds in the principal amounts of \$24 million, \$17 million, \$11 million, \$6.24 million and \$6.5 million, respectively, as such sales affected the purchase price to Appalachian.

It is now stated that the Authority will issue and sell an additional series of Revenue Bonds in the aggregate principal amount of \$19.5 million, the net proceeds from the sale of which will be used to provide for the principal payment required for the refunding, prior to their stated maturity, of \$19.5 principal amount of Revenue Bonds previously issued by the Authority. The Revenue Bonds will be issued under and secured by the Indenture and a fifth supplemental indenture, will bear interest semiannually and will mature at a date or dates not more than thirty years from the date of issuance. It is contemplated that the Revenue Bonds will be sold by the Authority pursuant to arrangements with Goldman Sachs & Co. as underwriter. Appalachian requests authority to alter the terms of their payments of the purchase price of the Facilities insofar as such payments will reflect the new terms of the Revenue Bonds.

#### Conesville Coal Preparation Company (70-7257)

Conesville Coal preparation Company ("Conesville"), 215 North Front Street, Columbus, Ohio 43215, a subsidiary of Columbus Southern Power Company ("CSPCo"), a public utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed an application pursuant to sections 9(a)(1) and 10 of the Act.

Conesville presently provides coal washing and related services to CSPCo. For the years 1985 through 1989, the annual amounts of clean coal produced or estimated to be produced by Conesville and the annual amounts paid or estimated to be paid by CSPCo to Conesville are as follows:



	Clean coal (tons)	Amounts paid
Year:		
1985.....	1,145,000	\$6,019,000
1986.....	1,755,000	8,046,000
1987.....	1,589,000	7,671,000
1988.....	1,600,000	8,016,000
1989.....	1,600,000	8,352,000

Conesville now requests authorization to perform coal washing and related services at the Conesville Plant for nonaffiliate entities in an amount of up to \$4.5 million per calendar year through December 31, 1991. The revenue derived from providing services to nonaffiliate companies, after payment of incremental costs, would be used to reduce the amount paid to Conesville by CSPCo pursuant to the Amended coal Washing Agreement.

#### Vermont Yankee Nuclear Power Corporation (70-7537)

Vermont Yankee Nuclear Power Corporation ("Vermont Yankee"), P.O. Box 169, Ferry Road, Brattleboro, Vermont 05301, and nuclear generating subsidiary of New England Electric System and Northeast Utilities, both registered holding companies, has filed a declaration pursuant to sections 6(a) and 7 of the Act.

Vermont Yankee proposes to issue and sell to Marine Midland Bank, N.A. ("Bank"), pursuant to a loan agreement to be entered into with the Bank, up to \$10.5 million aggregate principal amount of its short-term promissory notes ("Notes"). The Notes will be issued for an initial term of up to 360 days and may be extended, with the consent of the Bank, for an additional term ending on February 18, 1990. The Notes will be unsecured and will bear interest at an annual rate, selected by Vermont Yankee.

The proceeds of the Notes will be used by Vermont Yankee solely for the purpose of paying the fabrication and installation costs of certain computer equipment, called an Emergency Response Facility Information System ("ERFIS"), a computer software and hardware installation which serves as a diagnostic aid for control room operators at Vermont Yankee's nuclear generating plant. Vermont Yankee has arranged for the ERFIS equipment to be purchased by ComPlan, Inc., which will lease the ERFIS equipment back to Vermont Yankee for a ten-year term. The proceeds of the sale to ComPlan will be used to repay the Notes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-19814 Filed 8-30-88; 8:45 am]

BILLING CODE 8010-01-M

#### DEPARTMENT OF STATE

[Public Notice 1079]

#### Public Information Collection Requirement Submitted to OMB for Review

**AGENCY:** Department of State.

**ACTION:** The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

**SUMMARY:** Periodically natural disasters occur and/or security deteriorates in countries abroad to the degree that the life of U.S. citizens residing or traveling there becomes endangered and the United States Government is requested to evacuate them to a safe haven. This information collection is used to execute the emergency evacuation and to recover Federal funds expended on behalf of the citizens to complete their evacuation. The following summarizes the information collection proposal submitted to OMB:

1. *Type of request*—Extension.

*Originating office*—Bureau of Consular Affairs.

*Title of information collection*—Evacuation Documentation.

*Form number*—Optional Form 28.

*Frequency*—Annual/On occasion.

*Respondents*—U.S. citizens traveling or residing abroad.

*Estimated number of respondents*—16,800.

*Average hours per response*—4.9 minutes.

*Total estimated burden hours*—1,344.

Section 3504(h) of Pub. L. 96-511 does not apply.

*Additional Information or Comments:*

Copies of the proposed form and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Francine Picoult (202) 395-7340.

Date: August 16, 1988.

Richard C. Faulk,

Acting Assistant Secretary for Administration and Information Management.

[FR Doc. 88-19830 Filed 8-30-88; 8:45 am]

BILLING CODE 4710-24-M

[Public Notice CM-8/1210]

#### U.S. Organization for the International Telegraph and Telephone Consultative Committee, (CCITT) National Committee, Chairman's Ad Hoc Group for Communications Development; Meeting

The Department of State announces that the Chairman's Ad Hoc Group on International Communications Development of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT), National Committee, will meet September 19, 1988 at 10:00 a.m. in Room 1207, Department of State, 2201 C Street, NW., Washington, DC.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCITT activities. The Ad Hoc Group on International Communications Development reviews issues pertaining to the improvement and/or expansion of the communications infrastructure in developing countries.

This meeting will review recent developments concerning the Center for Telecommunications Development, specifically the status of fund raising efforts and a proposal to combine its functions with the Technical Cooperation Department of the International Telecommunication Union (ITU). These and other matters will be considered at the Center's Advisory Board at its October 6-7 session. It will also review the progress of U.S. preparations for the 1989 ITU Plenipotentiary Conference regarding Communications development matters.

Members of the general public, specifically representatives of the telecommunications industry and those who are concerned with telecommunications development issues in developing countries, are invited to attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. All attendees must use the C Street entrance to the building. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. All persons wishing to attend should call (202) 647-4629.

Request for further information should be directed to Mr. D. Clark Norton, State Department, Washington, DC, telephone (202) 647-4629.



Date: August 23, 1988.

Earl S. Barbely,

*Director, Office of Telecommunications and  
Information Standards, Chairman, U.S.  
CCITT National Committee.*

[FR Doc. 88-19754 Filed 8-30-88; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1211]

**Shipping Coordinating Committee,  
Subcommittee on Ocean Dumping;  
Meeting**

The Subcommittee on Ocean Dumping  
of the Shipping Coordinating Committee

will hold an open meeting on Friday,  
September 16, 1988, at the Office of  
Marine and Estuarine Protection of the  
Environmental Protection Agency. The  
meeting will convene at 2:00 p.m. in the  
OMEP Conference Room, 8th Floor, 499  
South Capitol Street, Washington, DC  
20003. Members of the public are invited  
and free to attend up to the seating  
capacity of the room.

The purpose of the meeting is to  
review and discuss the U.S. positions for  
the Eleventh Consultative Meeting of the  
London Dumping Convention, to be held  
in London October 3-7, 1988.

For further information, contact Dr. Al  
Wastler, Office of Marine and Estuarine  
Protection (WH-556F), Environmental  
Protection Agency, Washington, DC  
20460. His telephone number is (202)  
382-7166.

Date: August 24, 1988.

Alford Cooley,

*Acting Executive Secretary, Shipping  
Coordinating Committee.*

[FR Doc. 88-19753 Filed 8-30-88; 8:45 am]

BILLING CODE 4710-09-M



# Corrections

Federal Register

Vol. 53, No. 169

Wednesday, August 31, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 658

#### Shrimp Fishery of the Gulf of Mexico

##### Correction

In proposed rule document 88-19157 appearing on page 32264 in the issue of Wednesday, August 24, 1988, make the following correction:

In the third column, in the first line, "94509" should read "9450".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[FRL-3422-7; TN-055]

#### Approval and Promulgation of Implementation Plans, Tennessee; Revisions to the Nashville TSP Plan

##### Correction

In rule document 88-17245 beginning on page 32049 in the issue of Tuesday, August 23, 1988, make the following corrections:

#### PART 52—[CORRECTED]

1. On page 32050, in the third column, in amendatory instruction 2, in the second line, "(c)(81)" should read "(c)(86)".

#### § 52.2220 [Corrected]

2. On the same page, in the same column, in § 52.2220(c), in the first line, "(81)" should read "(86)".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CA-060-08-7122-10-1018; CA-20338]

#### Realty Action; Exchange of Public and Private Lands in Riverside County, CA

##### Correction

In notice document 88-9953 appearing on page 16198 in the issue of Thursday, May 5, 1988, make the following correction:

In the second column, under **SUMMARY**, immediately following the land description, insert:

In exchange for these lands, the United States will acquire the following described non-federal lands from The Nature Conservancy:

San Bernardino Meridian, California

T. 4 S., R. 7 E.

Sec. 8: NW¼SW¼, W½NE¼SW¼.

Containing 60 acres, more or less.

BILLING CODE 1505-01-D



# Asbestos Test Report Federal

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Wednesday  
August 31, 1988

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## Part II

### Environmental Protection Agency

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Asbestos-Containing Materials in Schools;  
EPA Approved Courses and Accredited  
Laboratories Under the Asbestos Hazard  
Emergency Response Act (AHERA);  
Notice



# ENVIRONMENTAL PROTECTION AGENCY

[OPTS-62068; FRL-3435-8]

## Asbestos-Containing Materials in Schools; EPA Approved Courses and Accredited Laboratories Under The Asbestos Hazard Emergency Response Act (AHERA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

**SUMMARY:** In section 206(c)(3) of Title II, the Administrator, in consultation with affected organizations, was directed to publish (and revise as necessary) a list of asbestos courses and tests in effect before the date of enactment of this title which qualify for equivalency treatment for interim accreditation purposes, and a list of asbestos courses and tests which the Administrator determines are consistent with the Model Plan and which will qualify a contractor for accreditation. In addition, under the amendment to TSCA Title II, section 206(f) was added which requires the Administrator to publish quarterly, beginning August 31, 1988, a list of EPA-approved asbestos training courses. The Administrator is also required to publish on a quarterly basis beginning August 31, 1988, a list of laboratories which have received accreditation from EPA.

This Federal Register notice includes the cumulative fourth list of course approvals and a list that includes State accreditation programs that EPA has approved as meeting the requirements of the Model Plan. Additionally, this notice includes the first list of accredited laboratories.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street, SW., Washington, DC 20460, Telephone: (202) 382-3790, TDD: (204) 554-0551.

**SUPPLEMENTARY INFORMATION:** Section 206 of Title II of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2646, required EPA to develop a Model Contractor Accreditation Plan by April 20, 1987. The plan was issued on April 20, 1987, and was published in the Federal Register of April 30, 1987 (52 FR 15875), as Appendix C to Subpart E, 40 CFR Part 763.

To conduct asbestos-related work in schools, persons must receive accreditation in order to inspect school buildings for asbestos, develop management plans, and design or conduct response actions. Such persons

can be accredited by States, which are required to adopt contractor accreditation plans at least as stringent as the EPA Model Plan, or by completing an EPA-approved training course and passing an examination for such course. The EPA Model Contractor Accreditation Plan establishes those areas of knowledge of asbestos inspection, management plan development, and response action technology that persons seeking accreditation must demonstrate and States must include in their accreditation programs.

In the Federal Register of October 30, 1987 (52 FR 41826), EPA promulgated a final "Asbestos-Containing Materials in Schools" rule (40 CFR Part 763, Subpart E) which required all local education agencies (LEAs) to identify asbestos-containing materials (ACM) in their school buildings and take appropriate actions to control the release of asbestos fibers. The LEAs are also required to describe their activities in management plans, which must be made available to the public and submitted to State governors. Under Title II, LEAs are required to use specially-trained persons to conduct inspections for asbestos, develop the management plans, and design or conduct major actions to control asbestos. The new rule took effect on December 14, 1987.

The length of initial training courses for accreditation under the Model Plan varies by discipline. Briefly, inspectors must take a 3-day training course; management planners must take the inspection course plus an additional 2 days devoted to management planning; and abatement project designers are required to have at least 3 days of training. In addition, asbestos abatement contractors and supervisors must take a 4-day training course and asbestos abatement workers are required to take a 3-day training course. For all disciplines, persons seeking accreditation must also pass an examination and participate in annual re-training courses. A complete description of accreditation requirements can be found in the Model Accreditation Plan at 40 CFR Part 763, Subpart E, Appendix C.I.1.A through E.

In section 206(c)(3) of Title II, and as amended by section 206(f), the Administrator, in consultation with affected organizations, is directed to publish quarterly a list of asbestos courses and tests in effect before the date of enactment of this title which qualified for equivalency treatment for interim accreditation purposes, and a list of asbestos courses and tests which the Administrator determined were consistent with the Model Plan and

which qualify a contractor for accreditation. In addition, the Agency has included in this notice a list of laboratories which have received interim accreditation from EPA for the analysis of bulk materials for asbestos by polarized light microscopy.

The Federal Register notice of October 30, 1987, included the initial list of course approvals. In addition, the list included State accreditation programs that EPA has approved as meeting the requirements of the Model Plan. The second Federal Register notice of February 10, 1988 (53 FR 3982), and the third Federal Register notice of June 1, 1988, (53 FR 20066), were cumulative listings of EPA course approvals and EPA approved State accreditation programs.

This Federal Register notice is divided into five units. Unit I discusses EPA approval of State accreditation programs. Unit II covers EPA approval of training courses. Unit III discusses EPA approval of training courses for interim accreditation. Unit IV provides the list of State accreditation programs and training courses approved by EPA as of July 1988. Unit V contains a listing of all laboratories, under the EPA Interim Accreditation Program for laboratories that are conducting analysis of bulk samples of asbestos-containing material. Subsequent Federal Register notices will add other State programs and training courses as well as accredited laboratories to this fourth cumulative list.

### I. EPA Approval of State Accreditation Programs

As discussed in the Model Plan, EPA is able to approve State accreditation programs that the Agency determines are at least as stringent as the Model Plan. In addition, the Agency is able to approve individual disciplines within a State's accreditation program. For example, a State that currently only has an accreditation requirement for inspectors can receive EPA approval for that discipline immediately rather than waiting to develop accreditation requirements for all disciplines in the Model Plan before seeking EPA approval. EPA can also approve State training programs that do not fully meet the Model Plan's requirements but do meet the requirements for interim accreditation.

As listed in Unit IV, Arkansas, Iowa, Kansas, Massachusetts, New Jersey, and Rhode Island have received EPA full approval for two accreditation disciplines, abatement workers as well as contractors and supervisors, that are at least as stringent as the Model Plan.



In addition, the States of Massachusetts and Iowa have received full approval for their inspector/management planner and project designer disciplines. Any training courses in those disciplines approved by the aforementioned States are EPA-approved courses for purposes of accreditation. These training courses are EPA-approved courses for purposes of TSCA Title II in these States and in all States without an EPA-approved accreditation program for that discipline. Current lists of training courses approved by Massachusetts, New Jersey, and Rhode Island are listed under Unit IV. Arkansas, Iowa, and Kansas have no separate provider listings because none of the States have independently approved any additional courses.

Each State accreditation program may have different requirements for State accreditation. For example, New Jersey requires participants of their courses to take the State exam. Therefore, those New Jersey approved course sponsors who are contemplating presenting the training in another State must develop their own examination. They must also submit a detailed statement about the development of the course examination as required by the Model Plan to the Regional Asbestos Coordinator in their region for EPA approval.

EPA has also approved a number of State programs for purposes of providing interim accreditation for persons who have met the training and examination requirements of these State programs. Persons meeting such requirements in these States have completed a training course and examination similar to the Model Plan's requirements before December 14, 1987. However, these individuals must become fully accredited within the time period specified in the Model Plan.

States that have approval for interim accreditation purposes for abatement contractors, supervisors and workers include Alaska, Arkansas, Kansas, and Washington. Michigan and Illinois have approval for interim accreditation purposes for abatement workers only. Recently, Arkansas and Kansas that have had programs suitable only for interim accreditation of abatement contractors, supervisors and workers have upgraded their accreditation programs to be at least as stringent as the Model Plan. Both States are now fully approved in these disciplines. Persons with interim accreditation in these States are eligible to conduct work during the time period specified in the Model Plan. However, these persons must eventually become fully accredited. All States programs

nationwide that do not fully meet the Model Plan's requirements must be upgraded within the time period specified in TSCA Title II to be at least as stringent as the Model Plan.

## II. EPA Approval of Training Courses

A cumulative list of training courses approved by EPA are listed under Unit IV. The examinations for these approved courses under Unit IV have also been approved by EPA. EPA has three categories of course approval: full, contingent, and approved for interim accreditation. Courses approved for interim accreditation will be discussed in Unit III.

Full approval means EPA has reviewed and found acceptable the course's written submission seeking EPA approval and has conducted an on-site audit and determined that the training course meets or exceeds the Model Plan's training requirements for the relevant discipline.

Contingent approval means the Agency has reviewed the course's written submission seeking EPA approval and found the material to be acceptable (i.e., the written course materials meet the Model Plan's training course requirements). However, EPA has not yet conducted an on-site audit.

Successful completion of either a fully approved course or a contingently approved course provides full accreditation for course attendees. If EPA subsequently audits a contingently approved course and withdraws approval due to deficiencies discovered during the audit, future course offerings would no longer have EPA approval. However, withdrawal of EPA approval would not effect the accreditation of persons who took previously offered training courses, including the course audited by EPA.

EPA-approved training courses listed under Unit IV are approved on a national basis. EPA has organized Unit IV by EPA Region to assist the public in locating those training courses that are offered nearby. Training courses are listed in the Region where the training course is headquartered. Although several sponsors offer their courses in various locations throughout the United States, a large number of course sponsors provide most of their training within their own Region.

EPA-approved State accreditation programs have the authority to have more stringent accreditation requirements than the Model Plan. As a result, some EPA-approved training courses listed under Unit IV may not meet the requirements of a particular State's accreditation program. Sponsors of training courses and persons who

have received accreditation or are seeking accreditation should contact individual States to check on accreditation requirements.

A number of training courses offered by several universities before EPA issued the Model Plan equaled or exceeded the subsequently issued Model Plan's training course requirements. These courses are listed under Unit IV as being fully approved. It should be noted that persons who have successfully completed these courses are fully accredited; they are not limited only to being accredited on an interim basis.

## III. EPA Approval of Training Courses For Interim Accreditation

TSCA Title II enables EPA to permit persons to be accredited on an interim basis if they have attended previous EPA-approved asbestos training and have passed (or pass) an asbestos examination. As a result, the Agency has approved training courses offered previously for purposes of accrediting persons on an interim basis. Only those persons who have taken training courses since January 1, 1985, will be considered under these interim accreditation provisions. In addition, EPA will not grant interim accreditation to any person who takes an equivalent training course after the date on which the asbestos-in-schools rule took effect (i.e., December 14, 1987). This accreditation is interim since the person shall be considered accredited for only 1 year after the date on which the State where the person is employed establishes an accreditation program at least as stringent as the EPA Model Plan. If the State does not adopt an accreditation program within the time period required by Title II, persons with interim accreditation must become fully accredited within 1 year after the date the State was required to have established a program.

For purposes of the Model Plan, an equivalent training course is one that is essentially similar in length and content to the curriculum found in the Model Plan. In addition, an equivalent examination must be essentially similar to the examination requirements found in the Model Plan.

Persons who have taken equivalent courses in their discipline for purposes of interim accreditation, and can produce evidence that they have successfully completed the course by passing an examination, are accredited on an interim basis under TSCA Title II. Evidence of successful completion of a course would include a certificate or photo identification card that showed



the person completed the training course on a certain date and passed the examination.

For persons who took one of the EPA-approved courses for interim accreditation listed under Unit IV, but did not take the course's examination, these persons may become accredited on an interim basis by passing an examination at an EPA-funded training center. These EPA-funded training centers are listed under Unit IV. Before taking the examination, persons must provide evidence to the EPA-funded center that they previously had taken one of the training courses listed under Unit IV that is approved by EPA for interim accreditation.

The New York City Department of Environmental Protection, Bureau of Air Resources has a training program for asbestos abatement workers and contractors/supervisors that does meet the requirements for EPA approval of training courses for interim accreditation (See Unit IV, Region II). As a result, persons who have met the training and examination requirements of the New York City Abatement Worker (i.e., "handler") or Contractor/Supervisor program between April 1, 1987 and December 14, 1987, are accredited as listed under Unit IV on an interim basis.

Courses approved by EPA as of July 1988 for interim accreditation are listed under Unit IV. Examinations offered by these courses also are approved for purposes of interim accreditation.

#### IV. List of EPA-Approved State Accreditation Programs and Training Courses

The fourth cumulative listing of EPA-approved State accreditation programs and training courses are listed in Unit IV. As discussed above, quarterly notifications of EPA approval of State accreditation programs and EPA approval of training courses will be published in subsequent Federal Register notices. The closing date for the acceptance of submissions to EPA for inclusion in this fourth notice was August 1, 1988. Omission from this list does not imply disapproval by EPA, nor does the order of the courses reflect priority or quality. The format of the notification lists first the State accreditation programs approved by EPA, followed by EPA-approved training courses listed by Region. The name, address, phone number, and contact person is provided for each training provider followed by the courses and type of course approval (i.e., full, contingent, or for interim purposes). Unless otherwise specified by

an alternative date, interim approvals are issued from January 1, 1985.

As of August 1, 1988, a total of 222 training providers are offering 375 EPA-approved training courses for accreditation under TSCA Title II. There are 142 asbestos abatement worker courses, 109 contractor/supervisor courses, 93 inspector/management planner courses, 9 inspector only courses, and 6 project designer courses. Ten States have either interim or fully approved State accreditation programs.

The recently developed EPA-funded model course for inspectors and management planners is now available in final form. In addition, a previous EPA developed course for asbestos abatement contractors and supervisors is available for interested parties that plan to offer training courses. Interested parties should contact the following firm to receive copies of the training courses: ATLIS Federal Services, Inc., EPA AHERA Program, 6011 Executive Blvd., Rockville, MD 20852, Phone number: (301) 468-1916.

A fee for each course will be charged to cover the reproduction costs for the written and visual aid materials. The model inspector/management planner course curriculum is now final. All who have paid for the draft student manual will automatically receive the instructor manual and the accompanying slides.

The following is the cumulative list of EPA-approved State accreditation programs and training courses:

#### Approved State Accreditation Programs

##### (1)(a) State: Alaska.

State Agency: Department of Labor  
Address: P.O. Box 1149, Juneau, AK 99802

Contact: Richard Arab  
Phone: (907) 465-4856

##### (b) Approved Accreditation Program Discipline:

Abatement Worker (interim from 10/1/85).

Contractor/Supervisor (interim from 10/1/85).

##### (2)(a) State: Arkansas.

State Agency: Arkansas Dept. of Pollution Control and Ecology  
Address: 8001 National Dr., P.O. Box 9583, Little Rock, AR 72209

Contact: Wilson Tolefree  
Phone: (501) 562-7444

##### (b) Approved Accreditation Program Discipline:

Abatement Worker (interim from 11/22/85).

Abatement Worker (full from 1/22/88).

Contractor/Supervisor (interim from 11/22/85).

Contractor/Supervisor (full from 1/22/88).

##### (3)(a) State: Illinois.

State Agency: Illinois Dept. of Public Health

Address: 525 West Jefferson St., 3rd Floor, Springfield, IL 62702

Contact: Don Anderson  
Phone: (217) 782-5830

##### (b) Approved Accreditation Program Discipline:

Abatement Worker (interim from 11/29/85).

##### (4)(a) State: Iowa.

State Agency: Iowa Department of Education Administrative Finance School Plant Facilities

Address: Grimes State Office Bldg., Des Moines, IA 50319-0146

Contact: C. Milt Wilson  
Phone: (515) 281-4743

##### (b) Approved Accreditation Program Discipline:

Abatement Worker (full from 11/30/87).

Contractor/Supervisor (full from 11/30/87).

Inspector (full from 11/30/87).

Inspector/Management Planner (full from 11/30/87).

Project Designer (full from 11/30/87).

##### (5)(a) State: Kansas.

State Agency: Kansas Dept. of Health and Environment Environmental Toxicology Section

Address: Forbes Field Building 321, Topeka, KS 66620-7430

Contact: John C. Irwin  
Phone: (913) 296-1500

##### (b) Approved Accreditation Program Discipline:

Abatement Worker (interim from 11/6/86).

Abatement Worker (full from 12/16/87).

Contractor/Supervisor (interim from 11/6/86).

Contractor/Supervisor (full from 12/16/87).

##### (6)(a) State: Massachusetts.

State Agency: Massachusetts Department of Labor & Industries; Division of Occupational Hygiene

Address: 1001 Watertown St., West Newton, MA 02165

Contact: Dick Levine  
Phone: (617) 727-3567

##### (b) Approved Accreditation Program Discipline:

Abatement Worker <sup>1</sup> (full from 10/30/87).

<sup>1</sup> Applies only to workers who have taken the Kansas Contractor/Supervisor course and passed the State's worker exam.



Contractor/Supervisor (full from 10/30/87).  
 Inspector (full from 10/30/87).  
 Inspector/Management Planner (full from 10/30/87).  
 Project Designer (full from 10/30/87).

*Massachusetts Department of Health, EPA-Approved Courses For Abatement Workers, Contractors/Supervisors, Inspector/Management Planners, and Project Designers*

(i)(a) *Training Provider:* Abatement Technical Corp c/o ECO Systems Inc.  
 Address: 5 North Meadow Rd.,  
 Medfield, MA 02052  
 Contact: Joseph C. Mohn  
 Phone: (609) 795-7834

(b) *Approved Course:*  
 Contractor/Supervisor.  
 (c) *Date of Certification:* 4/28/88.  
 (ii)(a) *Training Provider:* Asbestos Workers Union Local #6.

Address: 1725 Revere Beach Pwy.,  
 Everett, MA 02149  
 Contact: James P. McCourt  
 Phone: (617) 387-2679

(b) *Approved Courses:*  
 Abatement Worker.  
 Contractor/Supervisor.  
 (c) *Date of Certification:* 4/25/88.  
 (iii)(a) *Training Provider:* Astoria Industries.

Address: 538 Stewart Ave., Brooklyn,  
 NY 11222  
 Contact: Gary Dipaolo  
 Phone: (718) 387-0011

(b) *Approved Course:*  
 Abatement Worker.  
 (c) *Date of Certification:* 4/8/88.  
 (iv)(a) *Training Provider:* BCM Engineering.

Address: 1 Plymouth Meeting, Plymouth Meeting, PA 19462  
 Contact: Peter R. Charrington  
 Phone: (215) 825-3800

(b) *Approved Courses:*  
 Inspector/Management Planner.  
 Project Designer.  
 (c) *Date of Certification:* 4/28/88.  
 (v)(a) *Training Provider:* Con-Test, Inc.

Address: P.O. Box 591, East Longmeadow, MA 01028  
 Contact: Brenda Bolduc  
 Phone: (413) 525-1198

(b) *Approved Courses:*  
 Abatement Worker.  
 Contractor/Supervisor.  
 Inspector/Management Planner.  
 (c) *Date of Certification:* 2/25/88.  
 (vi)(a) *Training Provider:* Dennison Environmental, Inc.

Address: 35 Industrial Hwy. Woburn, MA 01880  
 Contact: Joan Ryan  
 Phone: (617) 932-9400

(b) *Approved Courses:*  
 Abatement Worker.  
 Contractor/Supervisor.  
 (c) *Date of Certification:* 4/8/88.  
 (vii)(a) *Training Provider:* Environmental Training Services.  
 Address: 12 Walnut Hill Park, Woburn, MA 01801  
 Contact: Kenneth P. Martin, Jr.  
 Phone: (617) 389-0348

(b) *Approved Courses:*  
 Abatement Worker.  
 Contractor/Supervisor.  
 (c) *Date of Certification:* 4/8/88.  
 (viii)(a) *Training Provider:* Howard School of Public Health.  
 Address: 677 Huntington Ave., Boston, MA 02115  
 Contact: William A. Burgass  
 Phone: (617) 732-1171

(b) *Approved Courses:*  
 Contractor/Supervisor.  
 Inspector/Management Planner.  
 (c) *Date of Certification:* 2/25/88.  
 (ix)(a) *Training Provider:* Hall-Kimbrell Environmental Services.  
 Address: 4340 West 15th St., Lawrence, KS 66046  
 Contact: Alice Hart  
 Phone: (800) 346-2860

(b) *Approved Courses:*  
 Abatement Worker.  
 Contractor/Supervisor.  
 Inspector/Management Planner.  
 Project Designer.  
 (c) *Date of Certification:* 4/25/88.  
 (x)(a) *Training Provider:* JF Walton & Company.

Address: 201 Marginal St., Chelsea, MA 02150  
 Contact: Richard King  
 Phone: (617) 884-0350

(b) *Approved Course:*  
 Abatement Worker.  
 (c) *Date of Certification:* 3/28/88.  
 (xi)(a) *Training Provider:* Kaselaan & D'Angelo Associates.  
 Address: 515 Grove St., Haddon Heights, NJ 08035

Contact: Paul Heffernan  
 Phone: (212) 213-1188

(b) *Approved Courses:*  
 Abatement Worker.  
 Contractor/Supervisor.  
 (c) *Date of Certification:* 2/25/88.  
 (xii)(a) *Training Provider:* N.A.A.C.O.  
 Address: 757 A Turnpike St., North Andover, MA 01845  
 Contact: Jerome W. Vitta  
 Phone: (617) 881-8711

(b) *Approved Courses:*  
 Abatement Worker.  
 Contractor/Supervisor.  
 (c) *Date of Certification:* 3/18/88.  
 (xiii)(a) *Training Provider:* New England Laborers' Training Trust Fund.

Address: 37 East St., Hopkinton, MA 01748-2699

Contact: James Merloni, Jr.  
 Phone: (617) 435-6316

(b) *Approved Course:*  
 Abatement Worker.  
 (c) *Date of Certification:* 2/25/88.  
 (xiv)(a) *Training Provider:* Tufts University Asbestos Information Center.  
 Address: 474 Boston Ave., Medford, MA 02155

Contact: Brenda Cole  
 Phone: (617) 381-3531

(b) *Approved Courses:*  
 Abatement Worker.  
 Contractor/Supervisor.  
 Inspector/Management Planner.  
 (c) *Date of Certification:* 3/16/88.  
 (xv)(a) *Training Provider:* National Training Fund of Sheetmetal and Air Conditioning Industry/Workers Institute for Safety and Health.

Address: 1126 16th St., NW.,  
 Washington, DC 20036  
 Contact: Matthew Gillen  
 Phone: (617) 887-1980

(b) *Approved Courses:*  
 Abatement Worker.  
 Contractor/Supervisor.  
 (c) *Date of Certification:* 4/28/88.  
 (xvi)(a) *Training Provider:* Institute for Environmental Education.

Address: 208 West Cummings Park,  
 Woburn, MA 01801  
 Contact: Lisa Stammer  
 Phone: (617) 935-7370

(b) *Approved Courses:*  
 Abatement Worker.  
 Contractor/Supervisor.  
 Inspector/Management Planner.  
 (c) *Date of Certification:* 4/28/88.  
 (7)(a) *State:* Michigan.

*State Agency:* State of Michigan Dept. of Public Health

Address: 3500 North Logan, P.O. Box 30035, Lansing, MI 48909  
 Contact: Bill DeLiefde  
 Phone: (517) 335-8186

(b) *Approved Accreditation Program Discipline:*  
 Abatement Worker (interim from 7/2/86).

(8)(a) *State:* New Jersey.

*State Agency:* State of New Jersey Dept. of Health

Address: CN 360, Trenton, NJ 08625-0360  
 Contact: James Brownlee  
 Phone: (609) 984-2193

(b) *Approved Accreditation Program Discipline:*  
 Abatement Worker (full from 6/18/85).  
 Contractor/Supervisor (full from 6/18/85).



**New Jersey Department of Health, EPA-  
Approved Courses for Abatement  
Workers and Contractors/Supervisors**

Please note: New Jersey approved course providers who present the training in another State must develop their own examination. They must also submit a detailed statement about the development of the course examination, as required by the Model Plan, to the Regional Asbestos Coordinator in their Region for EPA approval.

**(i)(a) Training Provider: Alternative Ways.**

Address: 100 Essex Ave., Ballmawr, NJ 08031

Contact: John Smith

Phone: (609) 933-3300

**(b) Approved Courses:**

Abatement Worker.

Contractor/Supervisor.

(c) Date of Certification: 4/25/85.

**(ii)(a) Training Provider: National Asbestos Training Institute.**

Address: 1776 Bloomsbury Ave., Ocean, NJ 07712

Contact: Doris Adler

Phone: (201) 918-0610

**(b) Approved Courses:**

Abatement Worker.

Contractor/Supervisor.

(c) Date of Certification: 5/3/85.

**(iii)(a) Training Provider: Asbestos Training Academy.**

Address: 218 Central Hwy., Pennsauken, NJ 08109

Contact: Marianne Brady

Phone: (609) 488-9200

**(b) Approved Courses:**

Abatement Worker.

Contractor/Supervisor.

(c) Date of Certification: 5/1/88.

**(iv)(a) Training Provider: Kaselaan and D'Angelo Associates.**

Address: 215 White Horse Pike, Hadden Heights, NJ 08035

Contact: Elizabeth Vanek

Phone: (609) 547-6500

**(b) Approved Courses:**

Abatement Worker.

Contractor/Supervisor.

(c) Date of Certification: 5/8/85.

**(v)(a) Training Provider: Princeton Testing Laboratory.**

Address: Rt. 1 Princeton Service Ctr., Princeton, NJ 08540

Contact: Anne Coogan

Phone: (609) 452-9050

**(b) Approved Courses:**

Abatement Worker.

Contractor/Supervisor.

(c) Date of Certification: 5/8/85.

**(vi)(a) Training Provider: A & S Insulation Co., Inc.**

Address: 2213 North Delsea Dr., Vineland, NJ 08360

Contact: William Clark

Phone: (609) 692-0883

**(b) Approved Courses:**

Abatement Worker.

Contractor/Supervisor.

(c) Date of Certification: 5/20/85.

**(vii)(a) Training Provider:**

Northeastern Analytical.

Address: 234 Route 70, Medford, NJ 08055

Contact: Skip Harris

Phone: (609) 654-1441

**(b) Approved Courses:**

Abatement Worker.

Contractor/Supervisor.

(c) Date of Certification: 5/20/85.

**(viii)(a) Training Provider: New York/ New Jersey White Lung Assoc.**

Address: 12 Warren St., New York, NY 10007

Contact: Beth Garner

Phone: (212) 619-2270

**(b) Approved Courses:**

Abatement Worker.

Contractor/Supervisor.

(c) Date of Certification: 5/21/85.

**(ix)(a) Training Provider: Hunter College of Health Sciences.**

Address: 425 East 25th St., New York, NY 10010

Contact: Dr. Jack Caravanos

Phone: (212) 481-4352

**(b) Approved Courses:**

Abatement Worker.

Contractor/Supervisor.

(c) Date of Certification: 5/23/85.

**(x)(a) Training Provider: Biospherics, Inc.**

Address: 12051 Indian Creek Ct., Beltsville, MD 20705

Contact: Marian Meiselman

Phone: (301) 369-3900

**(b) Approved Courses:**

Abatement Worker.

Contractor/Supervisor.

(c) Date of Certification: 6/12/85.

**(xi)(a) Training Provider: Building Laborers of N.J.—Training Center.**

Address: P.O. Box 163, Jamesburg, NJ 08831

Contact: Emmanuel Riggi

Phone: (201) 521-0200

**(b) Approved Courses:**

Abatement Worker.

Contractor/Supervisor.

(c) Date of Certification: 7/19/85.

**(xii)(a) Training Provider:**

International Association of Heat and Frost Insulators and Asbestos Workers Local No. 14.

Address: 6513 Bustleton Ave.,

Philadelphia, PA 19149

Contact: James Aikens

Phone: (215) 533-0395

**(b) Approved Courses:**

Abatement Worker.

Contractor/Supervisor.

(c) Date of Certification: 8/9/85.

**(xiii)(a) Training Provider: IT Corporation.**

Address: 336 West Anaheim St., Wilmington, CA 90744

Contact: Ron Freeman

Phone: (213) 830-1720

**(b) Approved Courses:**

Abatement Worker.

Contractor/Supervisor.

(c) Date of Certification: 8/29/85.

**(xiv)(a) Training Provider:**

International Association of Heat and Frost Insulators and Asbestos Workers Local No. 42.

Address: 1188 River Rd., New Castle, DE 19720

Contact: Robert Holden

Phone: (302) 328-4203

**(b) Approved Courses:**

Abatement Worker.

Contractor/Supervisor.

(c) Date of Certification: 10/30/85.

**(xv)(a) Training Provider: E.I. DuPont de Nemours and Co.**

Address: Chamber Works, Deepwater, NJ 08023

Contact: Charles Battle

Phone: (609) 540-2434

**(b) Approved Courses:**

Abatement Worker.

Contractor/Supervisor.

(c) Date of Certification: 5/1/87.

**(xvi)(a) Training Provider:**

International Association of Heat and Frost Insulators and Asbestos Workers Local No. 89.

Address: 2733 Nottingham Way,

Trenton, NJ 08619

Contact: Charles DaBronzo

Phone: (609) 587-0092

**(b) Approved Courses:**

Abatement Worker.

Contractor/Supervisor.

(c) Date of Certification: 5/13/86.

**(xvii)(a) Training Provider: Mid-Atlantic Asbestos Training Center UMDNJ.**

Address: 675 Hoes Ln., Piscataway, NJ 08854

Contact: Lee Laustsen

Phone: (201) 463-4500

**(b) Approved Courses:**

Abatement Worker.

Contractor/Supervisor.

(c) Date of Certification: 7/1/86.

**(xviii)(a) Training Provider: National Asbestos Council.**

Address: 2786 North Decatur Rd.,

Decatur, GA 30033

Contact: Tom Laubenthal

Phone: (404) 292-0629

**(b) Approved Courses:**

Abatement Worker.

Contractor/Supervisor.



(c) *Date of Certification*: 1/13/87.  
 (xix)(a) *Training Provider*: Asbestos Training Institute—HRF, Inc.  
 Address: 247 Hayler St., South Hackensack, NJ 07606  
 Contact: Robert Tetzlaff  
 Phone: (201) 489-3200  
 (b) *Approved Courses*: Abatement Worker.  
 Contractor/Supervisor.  
 (c) *Date of Certification*: 3/4/87.  
 (xx)(a) *Training Provider*: LOMA Environmental, Inc.  
 Address: 717 Fellowship Rd., Mount Laurel, NJ 08054  
 Contact: Laurence Ferrier  
 Phone: (609) 778-5757  
 (b) *Approved Courses*: Abatement Worker.  
 Contractor/Supervisor.  
 (c) *Date of Certification*: 4/13/87.  
 (xxi)(a) *Training Provider*: Asbestos Worker Local No. 32.  
 Address: 870 Broadway, Newark, NJ 07104  
 Contact: Paule Ielmini  
 Phone: (201) 485-3626  
 (b) *Approved Courses*: Abatement Worker.  
 Contractor/Supervisor.  
 (c) *Date of Certification*: 5/8/87.  
 (xxii)(a) *Training Provider*: Advanced Design and Technology Corp.  
 Address: 1300 Macdade Blvd., Folsom, PA 19033  
 Contact: Greg Santo  
 Phone: (215) 583-0660  
 (b) *Approved Courses*: Abatement Worker.  
 Contractor/Supervisor.  
 (c) *Date of Certification*: 6/27/87.  
 (xxiii)(a) *Training Provider*: Association of Wall and Ceiling Industries.  
 Address: 25 K St., NE., Washington, DC 20002  
 Contact: Carol Paquin  
 Phone: (202) 783-2924  
 (b) *Approved Courses*: Abatement Worker.  
 Contractor/Supervisor.  
 (c) *Date of Certification*: 6/17/87.  
 (xxiv)(a) *Training Provider*: BCM Eastern, Inc.  
 Address: One Plymouth Meeting Mall, Plymouth Meeting, PA 19462  
 Contact: Robert Ferguson  
 Phone: (215) 825-3800  
 (b) *Approved Courses*: Abatement Worker.  
 Contractor/Supervisor.  
 (c) *Date of Certification*: 6/7/87.  
 (xxv)(a) *Training Provider*: Certified Abatement Technologies, Inc.  
 Address: 47 Midland Ave., Elmwood Park, NJ 07407

Contact: Daniel Curtin  
 Phone: (201) 796-9589  
 (b) *Approved Courses*: Abatement Worker.  
 Contractor/Supervisor.  
 (c) *Date of Certification*: 6/3/87.  
 (9)(a) *State*: Rhode Island.  
 State Agency: State of Rhode Island & Providence Plantations, Department of Health  
 Address: 206 Cannon Bldg., 75 Davis St., Providence, RI 02908  
 Contact: James C. Hickey  
 Phone: (401) 277-3601  
 (b) *Approved Accreditation Program Discipline*:  
 Abatement Worker (full from 2/4/86).  
 Contractor/Supervisor (full from 2/4/86).  
 Rhode Island Department of Health,  
 EPA-Approved Courses For Abatement Workers and Contractors/Supervisors  
 (i)(a) *Training Provider*: Tufts University, Asbestos Information Center.  
 Address: 474 Boston Ave., Medford, MA 02155  
 Contact: Brenda Cole  
 Phone: (617) 381-3531  
 (b) *Approved Courses*: Abatement Worker.  
 Contractor/Supervisor.  
 (c) *Date of Certification*: 7/1/86.  
 (ii)(a) *Training Provider*: New England Laborers' Training Trust Fund.  
 Address: 37 East St., Hopkinton, MA 01748  
 Contact: James Merloni  
 Phone: (617) 435-6316  
 (b) *Approved Course*: Abatement Worker.  
 (c) *Date of Certification*: 7/1/86.  
 (iii)(a) *Training Provider*: Georgia Tech Research Institute Environmental Health and Safety Division.  
 Address: Room 129 O'Keefe Building, Atlanta, GA 30332  
 Contact: Mark Demyanek  
 Phone: (404) 894-3806  
 (b) *Approved Courses*: Abatement Worker.  
 Contractor/Supervisor.  
 (c) *Date of Certification*: 7/22/88.  
 (iv)(a) *Training Provider*: Con-Test, Inc.  
 Address: P.O. Box 591, East Longmeadow, MA 01028  
 Contact: Brenda Bolduc  
 Phone: (413) 525-1198  
 (b) *Approved Courses*: Abatement Worker.  
 Contractor/Supervisor.  
 (c) *Date of Certification*: 3/1/86.  
 (v)(a) *Training Provider*: National Asbestos Council.  
 Address: 2786 North Decatur Rd., Decatur, GA 30033

Contact: Tom Laubenthal  
 Phone: (404) 292-0629  
 (b) *Approved Course*: Abatement Worker.  
 (c) *Date of Certification*: 9/5/86.  
 (vi)(a) *Training Provider*: National Surface Cleaning, Inc.  
 Address: 49 Danton Dr., Methuen, MA 01844  
 Contact: Anthony Mesiti  
 Phone: (617) 686-6417  
 (b) *Approved Courses*: Abatement Worker.  
 Contractor/Supervisor.  
 (c) *Date of Certification*: 10/3/86.  
 (vii)(a) *Training Provider*: Heat Frost and Asbestos Union Local #6.  
 Address: 1725 Revere Beach Pwy., Everett, MA 02149  
 Contact: Bud McCort  
 Phone: (617) 387-0809  
 (b) *Approved Courses*: Abatement Worker.  
 Contractor/Supervisor.  
 (c) *Date of Certification*: 12/8/86.  
 (viii)(a) *Training Provider*: Analytical Testing Services.  
 Address: 180 Weeden St., Pawtucket, RI 02860  
 Contact: Robert Weisberg/Marie Stoeckel  
 Phone: (401) 723-7973  
 (b) *Approved Course*: Contractor/Supervisor.  
 (c) *Date of Certification*: 12/10/86.  
 (ix)(a) *Training Provider*: Covino Environmental Consultants, Inc.  
 Address: 12 Walnut Hill Park, Woburn, MA 01801  
 Contact: Sam Covino  
 Phone: (617) 933-2555  
 (b) *Approved Courses*: Abatement Worker.  
 Contractor/Supervisor.  
 (c) *Date of Certification*: 1/15/87.  
 (x)(a) *Training Provider*: Community College of Rhode Island.  
 Address: 1762 Louisquisset Park, Lincoln, RI 02865  
 Contact: Americo Ottavino  
 Phone: (401) 333-7060  
 (b) *Approved Course*: Abatement Worker.  
 (c) *Date of Certification*: 11/13/87.  
 (xi)(a) *Training Provider*: Institute for Environmental Education.  
 Address: 208 West Cummings Park, Woburn, MA 01801  
 Contact: Mary Beth Carver  
 Phone: (617) 935-7370  
 (b) *Approved Courses*: Abatement Worker.  
 Contractor/Supervisor.  
 (c) *Date of Certification*: 9/9/87.



(xii)(a) *Training Provider*: National Training Fund of Sheetmetal & Air Conditioning Industry/Workers' Institute for Safety and Health.

Address: 1126 16th St., NW., Washington, DC 20036

Contact: Mat Gillan  
Phone: (202) 887-1980

(b) *Approved Course*: Abatement Worker.

(c) *Date of Certification*: 2/2/88.

(xiii)(a) *Training Provider*: NAACO, Inc.

Address: 757 A Turnpike St., North Andover, MA 01845

Contact: Martin Levitt  
Phone: (617) 681-8711

(b) *Approved Courses*: Abatement Worker, Contractor/Supervisor.

(c) *Date of Certification*: 4/28/88.

(xiv)(a) *Training Provider*: Quality Control Service, Inc.

Address: 1 Andrew Cir., North Andover, MA 01845

Contact: Ajay Pathak  
Phone: (508) 475-0623

(b) *Approved Courses*: Abatement Worker, Contractor/Supervisor.

(c) *Date of Certification*: 4/27/88.

(10)(a) *State*: Washington.

State Agency: State of Washington Dept. of Labor and Industries, Division of Industrial Safety and Health

Address: 805 Plum SE., Olympia, WA 98504

Contact: Steve Cant  
Phone: (206) 753-6497

(b) *Approved Accreditation Program Discipline*:

Abatement Worker (interim from 11/21/85).

Contractor/Supervisor (interim from 11/21/85).

#### *EPA-Approved Training Courses*

##### *Region I—Boston, MA*

##### *Regional Asbestos Coordinator*:

Allison Roberts, EPA, Region I, Air and Management Division (APT-2311), JFK Federal Building, Boston, MA 02203.  
(617) 565-3273 (FTS) 835-3273.

*List of Approved Courses*: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region I training courses and contact points for each, are as follows:

(1)(a) *Training Provider*: Abatement Technology Corporation.

Address: 1 Boston Pl., Suite 1025, Boston, MA 02108

Contact: Scott Keyes  
Phone: (617) 723-3100

(b) *Approved Course*:

Contractor/Supervisor (contingent).

(2)(a) *Training Provider*: Con-Test.

Address: P.O. Box 591, East Longmeadow, MA 01028

Contact: Brenda Bolduc  
Phone: (413) 525-1198

(b) *Approved Courses*:

Abatement Worker (contingent).

Abatement Worker Refresher Course (contingent).

Contractor/Supervisor (contingent).

Contractor/Supervisor Refresher

Course (contingent).

Inspector/Management Planner (contingent).

Inspector/Management Planner Refresher Course (contingent).

(3)(a) *Training Provider*: Enviromed Services, Inc.

Address: 25 Science Park, New Haven, CT 06515

Contact: Michael Carey  
Phone: (203) 786-5580

(b) *Approved Course*:

Abatement Worker (contingent).

(4)(a) *Training Provider*: Environmental Training Services.

Address: 12 Walnut Hill Pk., Woburn, MA 01801

Contact: Kenneth P. Martin  
Phone: (617) 398-0348

(b) *Approved Course*:

Abatement Worker (contingent).

(5)(a) *Training Provider*: Hygienetics Inc.

Address: 150 Causeway St., Boston, MA 02114

Contact: John W. Cowdery  
Phone: (617) 723-4664

(b) *Approved Course*:

Inspector (contingent).

(6)(a) *Training Provider*: Institute for Environmental Education.

Address: 208 West Cummings Park, Woburn, MA 01801

Contact: Lisa Stammer  
Phone: (617) 935-7370

(b) *Approved Courses*:

Abatement Worker (contingent).

Abatement Worker Refresher Course (contingent).

Contractor/Supervisor (full from 9/18/87).

Contractor/Supervisor Refresher Course (contingent).

Inspector/Management Planner (contingent).

(7)(a) *Training Provider*: International Association of Heat & Frost Insulators Asbestos Workers, Union Local #33.

Address: 15 South Elm St., Wallingford, CT 06492

Contact: Joseph V. Soli

Phone: (203) 235-3547

(b) *Approved Course*:

Contractor/Supervisor (contingent).

(8)(a) *Training Provider*: Maine Labor Group on Health, Inc.

Address: P.O. Box 5, Augusta, ME 04330

Contact: Dianna White  
Phone: (207) 289-2770

(b) *Approved Courses*:

Abatement Worker (contingent).

Contractor/Supervisor (contingent).

Contractor/Supervisor Refresher

Course (full from 3/26/88).

(9)(a) *Training Provider*: New England Laborers' Training Trust Fund.

Address: 37 East St., Hopkinton, MA 01748

Contact: Jim Merloni, Jr.

Phone: (617) 435-6316

(b) *Approved Courses*:

Abatement Worker (contingent).

Abatement Worker Refresher Course (contingent).

(10)(a) *Training Provider*: Tufts University, Asbestos Information Center.

Address: 474 Boston Ave., Medford, MA 02155

Contact: Brenda Cole  
Phone: (617) 381-3531

(b) *Approved Courses*:

Contractor/Supervisor (interim from 9/1/85 to 5/31/87).

Contractor/Supervisor (full from 6/1/87).

Inspector/Management Planner (full from 11/16/87).

##### *Region II—Edison, NJ*

##### *Regional Asbestos Coordinator*:

Arnold Freiburger, EPA, Region II, Woodbridge Ave., Raritan Depot Bldg. 10, (ES-PTS), Edison, NJ 08837. (201) 321-6668, (FTS) 340-6671.

*List of Approved Courses*: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region II training courses and contact points for each, are as follows:

(1)(a) *Training Provider*: ATC Environmental, Inc.

Address: 104 East 25th St., New York, NY 10036

Contact: David Schwartz  
Phone: (212) 353-8280

(b) *Approved Course*:

Inspector/Management Planner (contingent).

(2)(a) *Training Provider*: Abatement Safety Training Institute (ASTI).



Address: 323 West 39th St., New York, NY 10018

Contact: Jay Sall  
Phone: (212) 629-8400

(b) *Approved Course:*  
Inspector/Management Planner (full from 3/21/88).

(3)(a) *Training Provider:* Alternative Ways, Inc.

Address: 100 Essex Ave., Bellmawr, NJ 08031

Contact: Robert C. Hasiuk  
Phone: (609) 933-3300

(b) *Approved Course:*  
Inspector/Management Planner (full from 5/26/88).

(4)(a) *Training Provider:* Asteco, Inc.

Address: P.O. Box 2204, Niagara University, Niagara, NY 14109

Contact: John Larson  
Phone: (716) 297-5992

(b) *Approved Course:*  
Abatement Worker (full from 4/13/88).

(5)(a) *Training Provider:* Astoria Industries Inc.

Address: 538 Stewart Ave., Brooklyn, NY 11222

Contact: John Gajeski  
Phone: (718) 387-0011

(b) *Approved Course:*  
Abatement Worker (full from 4/18/88).

(6)(a) *Training Provider:* Buffalo Laborers' Training Fund.

Address: 481 Franklin St., Buffalo, NY 14202

Contact: Victor J. Sansanese  
Phone: (716) 884-7157

(b) *Approved Course:*  
Abatement Worker (contingent).

(7)(a) *Training Provider:* Calibrations Laboratories Training Center.

Address: P.O. Box 11266, Albany, NY 12211

Contact: James Percent  
Phone: (518) 381-1893

(b) *Approved Course:*  
Project Designer (full from 5/23/88).

(8)(a) *Training Provider:* Cayuga-Onondaga BOCES.

Address: 234 South Street Rd., Auburn, NY 13021

Contact: Peter Pirnie  
Phone: (315) 253-0361

(b) *Approved Course:*  
Abatement Worker (contingent).

(9)(a) *Training Provider:* Hygeia of New York Inc.

Address: P.O. Box 206, 100 Oriskany Blvd., Whitesboro, NY 13492

Contact: Richard A. Gigliotti  
Phone: (315) 736-8980

(b) *Approved Course:*  
Abatement Worker (full from 4/13/88).

(10)(a) *Training Provider:* Institute of Asbestos Technology Corp.

Address: 5900 Butternut Dr., East Syracuse, NY 13057

Contact: Doreen E. Bianchi  
Phone: (315) 437-1307

(b) *Approved Course:*  
Abatement Worker (full from 6/27/88).

(11)(a) *Training Provider:* Kaselaan and D'Angelo Associates, Inc.

Address: 515 Grove St., Grove Plaza, Haddon Heights, NJ 08035

Contact: Lance Fredericks  
Phone: (212) 213-1188

(b) *Approved Course:*  
Inspector/Management Planner (full from 3/7/88).

(12)(a) *Training Provider:* Laborer's Local No. 91, Educational and Training Fund.

Address: 2556 Seneca Ave., Niagara Falls, NY 14305

Contact: Joel Cicero  
Phone: (716) 297-9253

(b) *Approved Course:*  
Abatement Worker (full from 7/27/87).

(13)(a) *Training Provider:* Mid-Atlantic Asbestos Training Center UMDNJ Robert Wood Johnson Medical School.

Address: 675 Hoes Lane, Piscataway, NJ 08854-5635

Contact: Lee Laustsen  
Phone: (201) 463-4500

(b) *Approved Courses:*  
Abatement Worker (full from 7/28/86).

Contractor/Supervisor (full from 7/28/86).

Inspector/Management Planner (full from 11/16/87).

(14)(a) *Training Provider:* National Asbestos Training Institute (NATI).

Address: 1776 Bloomsbury Ave., Ocean, NJ 07712

Contact: Doris L. Adler  
Phone: (201) 918-0610

(b) *Approved Course:*  
Inspector/Management Planner (contingent).

(15)(a) *Training Provider:* National Institution Abatement Science and Technology (NIAT).

Address: 114 West State St., P.O. Box 1780, Trenton, NJ 08607-1780

Contact: Glenn W. Phillips  
Phone: (800) 422-2836

(b) *Approved Course:*  
Inspector/Management Planner (contingent).

(16)(a) *Training Provider:* Niagara County Community College.

Address: 3111 Saunders Settlement Rd., Sanborn, NY 14132

Contact: Eugene Zinni  
Phone: (716) 731-3271

(b) *Approved Courses:*  
Abatement Worker (full from 1/25/88).

Contractor/Supervisor (full from 2/19/88).

Inspector/Management Planner (contingent).

(17)(a) *Training Provider:* O'Brien & Gere Engineers, Inc.

Address: Box 4873/1304 Buckley Rd., Syracuse, NY 13221

Contact: Robert Bellandi  
Phone: (315) 451-4700

(b) *Approved Course:*  
Inspector (full from 6/21/88).

(18)(a) *Training Provider:* Princeton Testing Laboratory, Inc.

Address: 3490 US Route 1, Princeton Service Center, Princeton, NJ 08543

Contact: Anne Coogan  
Phone: (609) 452-9050

(b) *Approved Course:*  
Inspector/Management Planner (contingent).

(19)(a) *Training Provider:* Safe Air Environmental Group, Inc.

Address: P.O. Box 457, Depew, NY 14043

Contact: Reza Farrokh  
Phone: (800) 634-7234

(b) *Approved Courses:*  
Abatement Worker (full from 4/4/88).  
Contractor/Supervisor (full from 4/4/88).

(20)(a) *Training Provider:* Tri-Cities Laborers Training Program.

Address: 5 Lombard St., Schenectady, NY 12304

Contact: Joseph Zappone  
Phone: (518) 370-3463

(b) *Approved Course:*  
Abatement Worker (full from 3/21/88).

(21)(a) *Training Provider:* Western New York Council on Occupational Safety & Health (WNYCOSH).

Address: 450 Grider St., Buffalo, NY 14215

Contact: Jeanne Reilly  
Phone: (716) 897-2110

(b) *Approved Course:*  
Abatement Worker (full from 1/24/88).

Region III—Philadelphia, PA

*Regional Asbestos Coordinator:*  
Staphanie Branche, EPA, Region III (3HW-40), 841 Chestnut Bldg., Philadelphia, PA 19107. (215) 597-9859, (FTS) 597-9859.

*List of Approved Courses:* The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the



course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region III training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Aerosol Monitoring & Analysis, Inc.  
Address: P.O. Box 687, Hunt Valley, MD 21030

Contact: D.R. Twilley  
Phone: (301) 785-5615

(b) *Approved Courses:*  
Abatement Worker (full from 7/14/87).  
Contractor/Supervisor (full from 7/14/87).

Inspector/Management Planner (full from 3/31/88).

(2)(a) *Training Provider:* Alice Hamilton Center for Occupational Health, Committees on Occupational Safety and Health.

Address: 801 Pennsylvania Ave. SE, Washington, DC 20003-2155

Contact: Brian Christopher  
Phone: (202) 543-0005

(b) *Approved Courses:*  
Abatement Worker (full from 1/18/88).  
Contractor/Supervisor (full from 1/16/88).

Inspector/Management Planner (full from 6/20/88).

(3)(a) *Training Provider:* Asbestos Abatement Council of the Association of Wall & Ceiling Industries.

Address: 25 K St. NE, Suite 300, Washington, DC 20002

Contact: Carol Paquin  
Phone: (202) 783-2924

(b) *Approved Courses:*  
Abatement Worker (full from 5/19/87).  
Contractor/Supervisor (full from 5/19/87).

(4)(a) *Training Provider:* Biospherics, Inc.

Address: 12051 Indian Creek Ct., Beltsville, MD 20705

Contact: Norma D. Stanford  
Phone: (301) 369-3900

(b) *Approved Courses:*  
Abatement Worker (full from 10/1/87).  
Contractor/Supervisor (full from 10/1/87).

Inspector/Management Planner (contingent).

(5)(a) *Training Provider:* Delaware Technical & Community College.

Address: P.O. Box 897, Dover, DE 19903  
Contact: David Stanley  
Phone: (302) 736-4621

(b) *Approved Courses:*  
Abatement Worker (contingent).  
Contractor/Supervisor (contingent).

(6)(a) *Training Provider:* Drexel University, Office of Continuing Professional Education.

Address: 32nd & Chestnut Sts., Philadelphia, PA 19104

Contact: Robert Ross  
Phone: (215) 895-2156

(b) *Approved Courses:*  
Abatement Worker (full from 6/9/86).  
Contractor/Supervisor (full from 6/9/86).

Inspector/Management Planner (contingent).

(7)(a) *Training Provider:* Dynamac Corporation.

Address: 11140 Rockville Pike, Rockville, MD 20852

Contact: Robert C. Wyatt, Jr.  
Phone: (301) 468-2500

(b) *Approved Course:*  
Inspector (contingent).

(8)(a) *Training Provider:* Facilities Management Consultants, Inc.

Address: P.O. Box 309, Cecil, PA 15321

Contact: Edward Monaco  
Phone: (412) 745-1770

(b) *Approved Course:*  
Contractor/Supervisor (contingent).

(9)(a) *Training Provider:* Galson Technical Services, Inc.

Address: 5170 Campus Dr., Suite 200, Plymouth Meeting, PA 19462

Contact: Janet Oppenheim-McMullen  
Phone: (213) 834-7288

(b) *Approved Course:*  
Inspector/Management Planner (contingent).

(10)(a) *Training Provider:* Hazard Abatement Training Center.

Address: 101 East Lancaster Ave., Wayne, PA 19087

Contact: Robert Mautner  
Phone: (215) 971-0830

(b) *Approved Course:*  
Inspector/Management Planner (contingent).

(11)(a) *Training Provider:* IND TRA CO., A Subsidiary of WACO, Inc.

Address: 5450 Lewis Rd., P.O. Box 836, Sandston, VA 23150

Contact: William Belanich  
Phone: (804) 222-8440

(b) *Approved Courses:*  
Abatement Worker (full from 9/15/87).  
Contractor/Supervisor (full from 9/15/87).

(12)(a) *Training Provider:* Jenkins Professionals, Inc.

Address: 5022 Campbell Blvd., Suite F, Baltimore, MD 21236

Contact: Larry Jenkins  
Phone: (301) 529-3553

(b) *Approved Courses:*  
Abatement Worker (contingent).  
Contractor/Supervisor (contingent).

(13)(a) *Training Provider:* Laborer's District Council of Eastern Pennsylvania.

Address: 2163 Berryhill St., Harrisburg, PA 17104

Contact: Gerald D. Temarantz  
Phone: (717) 564-2707

(b) *Approved Course:*  
Abatement Worker (contingent).

(14)(a) *Training Provider:* Laborer's District Council of Western Pennsylvania.

Address: 1101 Fifth Ave., Pittsburgh, PA 15219

Contact: Paul Quarantillo  
Phone: (412) 391-1712

(b) *Approved Courses:*  
Abatement Worker (contingent).  
Contractor/Supervisor (contingent).

(15)(a) *Training Provider:* Laborers' District Council, Education Training Fund of Philadelphia & Vicinity.

Address: 500 Lancaster Ave., Exton, PA 19341

Contact: Jerry Roseman  
Phone: (215) 836-1175

(b) *Approved Courses:*  
Abatement Worker (interim from 11/1/87 to 12/14/87).  
Abatement Worker (contingent).

(16)(a) *Training Provider:* Medical College of Virginia, Virginia Commonwealth University, Dept. of Preventive Medicine.

Address: P.O. Box 212, Richmond, VA 23298

Contact: Leonard Vance, PhD  
Phone: (804) 786-9785

(b) *Approved Courses:*  
Contractor/Supervisor (full from 11/2/87).

Inspector/Management Planner (full from 2/29/88).

(17)(a) *Training Provider:* NOVATEC, Inc.

Address: 505 Drury Lane, Baltimore, MD 21229

Contact: Robert Olcerst  
Phone: (301) 566-0859

(b) *Approved Course:*  
Abatement Worker (contingent).

(18)(a) *Training Provider:* National Training Fund of Sheet Metal & Air Conditioning Industry/Workers' Institute for Safety & Health (WISH).

Address: 1128 Sixteenth Street NW., Washington, DC 20036

Contact: Scott Schneider  
Phone: (202) 887-1980

(b) *Approved Courses:*  
Abatement Worker (interim from 11/1/86 to 8/1/87).

Abatement Worker (full from 9/18/87).



Contractor/Supervisor (interim from 11/1/86 to 8/1/87).

Contractor/Supervisor (full from 9/18/87).

Inspector (contingent).  
(19)(a) *Training Provider*: Old Dominion University, Office of Continuing Education, College of Health Services.

Address: Norfolk, VA 23529-0290

Contact: Shirley Glover

Phone: (804) 440-4256

(b) *Approved Course*:  
Abatement Worker (contingent).  
(20)(a) *Training Provider*: Oneil M. Banks, Inc.

Address: 336 South Main St., Bel Air, MD 21014

Contact: Oneil M. Banks

Phone: (301) 879-4676

(b) *Approved Courses*:  
Abatement Worker (contingent).  
Contractor/Supervisor (contingent).  
Inspector (contingent).  
(21)(a) *Training Provider*: Paskal Environmental Services.

Address: 1400 South Joyce St., Suite C 1701, Arlington, VA 22202

Contact: Steven Paskal

Phone: (703) 920-6653

(b) *Approved Course*:  
Abatement Worker (contingent).  
(22)(a) *Training Provider*: S.G. Brown Inc.

Address: 2701 Sonic Dr., Virginia Beach, VA 23456

Contact: Sandra A. Akers

Phone: (804) 468-0027

(b) *Approved Course*:  
Abatement Worker (contingent).  
(23)(a) *Training Provider*: STI, Inc.

Address: P.O. Box 1029, Aberdeen, MD 21001

Contact: Terry F. Carraway, Jr.

Phone: (301) 575-7844

(b) *Approved Courses*:  
Abatement Worker (contingent).  
Contractor/Supervisor (contingent).  
(24)(a) *Training Provider*: Safety Management Institute.

Address: P.O. Box 2267, Altoona, PA 16803

Contact: Christopher Tate

Phone: (814) 946-8778

(b) *Approved Courses*:  
Abatement Worker (contingent).  
Contractor/Supervisor (contingent).  
Inspector/Management Planner (full from 2/8/88).

(25)(a) *Training Provider*: Temple University, College of Engineering.

Address: 12th & Norris Sts., Philadelphia, PA 19122

Contact: Lester Levin

Phone: (215) 787-6479

(b) *Approved Courses*:

Abatement Worker (full from 9/28/87).

Contractor/Supervisor (full from 9/28/87).

Inspector/Management Planner (full from 10/13/87).

(26)(a) *Training Provider*: United Environmental Systems, Inc.

Address: 14 Stella Dr., Churchville, PA 18966

Contact: Michael Yaron

Phone: (215) 829-9454

(b) *Approved Courses*:  
Contractor/Supervisor (contingent).  
Inspector/Management Planner (contingent).

(27)(a) *Training Provider*: University of Pittsburgh, Graduate School of Public Health.

Address: Department of Industrial Environmental Health Sciences, Pittsburgh, PA 15261

Contact: Dietrich A. Weyel

Phone: (412) 624-3850

(b) *Approved Courses*:  
Abatement Worker (full from 6/6/88).  
Contractor/Supervisor (full from 6/6/88).

(28)(a) *Training Provider*: West Virginia University Extension Service.

Address: 812 Knapp Hall, Morgantown, WV 26506

Contact: Rudy Filek

Phone: (304) 293-5691

(b) *Approved Course*:  
Inspector/Management Planner (contingent).

(29)(a) *Training Provider*: White Lung Association.

Address: 1114 Cathedral St., Baltimore, MD 21201

Contact: James Fite

Phone: (301) 727-6029

(b) *Approved Courses*:  
Abatement Worker (full from 6/6/88).  
Contractor/Supervisor (full from 6/6/88).

Inspector/Management Planner (full from 2/15/88).

(30)(a) *Training Provider*: William L. James Enterprises, Inc.

Address: 710 Capouse Ave., Scranton, PA 18509

Contact: William L. James

Phone: (717) 346-2637

(b) *Approved Courses*:  
Abatement Worker (contingent).  
Contractor/Supervisor (contingent).

Region IV—Atlanta, GA

*Regional Asbestos Coordinator*: Jim Littell, EPA Region IV, 345 Courtland Street NE. (P&TSB), Atlanta, GA 30365. (404) 347-5053, (FTS) 257-5053.

*List of Approved Courses*: The following training courses have been approved by EPA. The courses are listed

under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region IV training courses and contact points for each, are as follows:

(1)(a) *Training Provider*: A.T.C., Inc.

Address: 1635 Pumphrey Ave., Auburn, AL 36830-4303

Contact: David L. Elam, Jr.

Phone: (205) 826-6100

(b) *Approved Courses*:  
Abatement Worker (contingent).  
Inspector/Management Planner (contingent).

(2)(a) *Training Provider*: AHP Research, Inc.

Address: 1501 Johnsons Ferry Rd., Suite 230, P.O. Box 71926, Marietta, GA 30007

Contact: Dwight Brown

Phone: (404) 565-0061

(b) *Approved Courses*:  
Inspector/Management Planner (interim from 5/28/86 to 12/13/87).  
Inspector/Management Planner (full from 12/14/87).

(3)(a) *Training Provider*: ATI Environmental Services.

Address: P.O. Box 3044, Louisville, KY 40201

Contact: Tim Ellis

Phone: (502) 589-5308

(b) *Approved Courses*:  
Abatement Worker (full from 1/12/88).

Contractor/Supervisor (full from 1/12/88).

(4)(a) *Training Provider*: Asbestos Consultants, Inc.

Address: P.O. Box 9054, Greensboro, NC 27408

Contact: Thomas Petty

Phone: (919) 275-3907

(b) *Approved Course*:  
Inspector/Management Planner (contingent).

(5)(a) *Training Provider*: Asbestos Consulting & Training.

Address: 903 Northwest 6th Ave., Fort Lauderdale, FL 33311

Contact: Jim Stump

Phone: (305) 524-7208

(b) *Approved Course*:  
Abatement Worker (full from 5/8/88).

(6)(a) *Training Provider*: Asbestos Workers Local Union #48 Joint Apprenticeship Training Program.

Address: 7815 Old Morrow Rd.,

Jonesboro, GA 30236

Contact: Timothy Fuller

Phone: (404) 478-1393

(b) *Approved Courses*:  
Abatement Worker (full from 5/4/88).



Contractor/Supervisor (full from 6/27/88).

(7)(a) *Training Provider*: BCM Engineers, Inc.

Address: 108 St. Anthony St., P.O. Box 1784, Mobile, AL 36633  
Contact: Gail Conner  
Phone: (205) 433-3981

(b) *Approved Courses*:  
Inspector/Management Planner (full from 11/11/87).

Project Designer (full from 12/8/87).

(8)(a) *Training Provider*: DPC General Contractors, Inc.  
Address: 250 Arizona Ave., NE., Bldg. A, Atlanta, GA 30307  
Contact: Glen Kahler  
Phone: (404) 373-0561

(b) *Approved Course*:

Abatement Worker (full from 5/9/88).

(9)(a) *Training Provider*: ELB & Associates, Inc.

Address: 605 Eastowne Dr., Chapel Hill, NC 27514  
Contact: Michael L. Cannon  
Phone: (919) 493-4471

(b) *Approved Course*:

Abatement Worker (contingent).

(10)(a) *Training Provider*: Georgia Tech. Research Institute Environmental Health & Safety Division.

Address: O'Keefe Building, Room 029, Atlanta, GA 30332  
Contact: Robert D. Schmitter  
Phone: (404) 894-3806

(b) *Approved Courses*:

Contractor/Supervisor (interim from 6/1/85 to 5/10/87).

Contractor/Supervisor (full from 5/11/87).

Contractor/Supervisor Refresher Course (full from 7/7/88).

Inspector/Management Planner (full from 10/1/87).

Project Designer (full from 6/7/88).

(11)(a) *Training Provider*: Great Barrier Insulation Co.

Address: Meador Warehouse, Western Dr., Mobile, AL 36607  
Contact: Thomas Knotts  
Phone: (205) 476-0350

(b) *Approved Course*:

Abatement Worker (contingent).

(12)(a) *Training Provider*: Howard L. Henson Training Institute.

Address: 3592 Flat Shoals Rd., Decatur, GA 30034  
Contact: Stephen Henson  
Phone: (404) 243-5107

(b) *Approved Course*:

Abatement Worker (full from 2/16/88).

(13)(a) *Training Provider*: Laborers' District Council of Southeast Florida.

Address: 799 Northwest 62nd St., Miami, FL 33510

Contact: Albert Houston  
Phone: (305) 754-2659

(b) *Approved Course*:  
Abatement Worker (full from 3/15/88).

(14)(a) *Training Provider*: Mississippi State University.

Address: P.O. Drawer 5247, Mississippi State, MS 39762-5247  
Contact: Dr. Margaret V. Naugle  
Phone: (601) 325-2677

(b) *Approved Courses*:  
Contractor/Supervisor (contingent).  
Inspector/Management Planner (full from 6/20/88).

(15)(a) *Training Provider*: National Asbestos Council (NAC) Training Department.

Address: 2786 North Decatur Rd., Decatur, GA 30033  
Contact: Tom Laubenthal  
Phone: (404) 209-0629

(b) *Approved Courses*:  
Abatement Worker (interim from 7/1/86 to 6/1/87).

Abatement Worker (full from 7/1/87).

(16)(a) *Training Provider*: Occup. Safety & Hlth. Educ. Resource Center/Dept. of Environ. Sci. & Eng. Sch. of Public Hlth. Univ. of NC.

Address: 109 Conner Dr., Suite 1101, Chapel Hill, NC 27514  
Contact: Ted Williams  
Phone: (919) 962-2101

(b) *Approved Courses*:  
Contractor/Supervisor (contingent).  
Inspector/Management Planner (full from 11/9/87).

(17)(a) *Training Provider*: South Carolina Research and Training Center.

Address: 300 Gervais St., Annex III, Columbia, SC 29201  
Contact: Jan Temple  
Phone: (803) 737-2060

(b) *Approved Courses*:  
Contractor/Supervisor (full from 3/8/88).

Inspector/Management Planner (full from 3/1/88).

(18)(a) *Training Provider*: The Environmental Institute.

Address: COBB Corporate Center/300, 350 Franklin Rd., Marietta, GA 30067  
Contact: Eva Clay  
Phone: (404) 425-2000

(b) *Approved Courses*:  
Abatement Worker (full from 5/2/88).  
Contractor/Supervisor (full from 2/1/88).

Contractor/Supervisor Refresher Course (full from 5/19/88).

Inspector/Management Planner (full from 1/25/88).

Project Designer (full from 2/9/88).

(19)(a) *Training Provider*: University of Alabama, College of Continuing

Studies, Division of Environmental and Industrial Programs.

Address: P.O. Box 2967, Tuscaloosa, AL 35486-2967

Contact: William Weems  
Phone: (205) 348-3033

(b) *Approved Course*:  
Contractor/Supervisor (full from 12/14/87).

(20)(a) *Training Provider*: University of Alabama-Birmingham Deep South Center.

Address: Birmingham, AL 35294  
Contact: Elizabeth Lynch  
Phone: (205) 934-7032

(b) *Approved Course*:  
Inspector/Management Planner (full from 3/21/88).

(21)(a) *Training Provider*: University of Florida, TREEO Center.

Address: 3900 South West 63rd Blvd., Gainesville, FL 32608  
Contact: Sandra Scaggs  
Phone: (904) 392-9570

(b) *Approved Courses*:  
Contractor/Supervisor (interim from 2/9/87 to 4/30/87).

Contractor/Supervisor (full from 5/1/87).

Inspector/Management Planner (interim from 1/27/87 to 12/14/87).

Inspector/Management Planner (full from 2/15/88).

(22)(a) *Training Provider*: University of Kentucky, College of Engineering Continuing Education.

Address: 305 Slone Bldg., Lexington, KY 40506-0053

Contact: A.B. Broderson  
Phone: (606) 257-4300

(b) *Approved Course*:  
Inspector/Management Planner (full from 2/15/88).

(23)(a) *Training Provider*: Williams and Associates, Inc. Environmental Training Center.

Address: 460 Tennessee St., Memphis, TN 38103

Contact: Ruth Williams  
Phone: (901) 521-9030

(b) *Approved Courses*:  
Abatement Worker (full from 4/18/88).

Contractor/Supervisor (full from 4/18/88).

Region V—Chicago, IL

*Regional Asbestos Coordinator*:  
Anthony Restaino, EPA Region V, 230 S. Dearborn St., (T-SPTB-7), Chicago, IL 60604. (312) 886-6003 (FTS) 886-6003.

*List of Approved Courses*: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the



course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region V training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Abatement Training Institute, Inc.

Address: P.O. Box 26835, Columbus, OH 43226-0835

Contact: Steven Ritchie

Phone: (614) 267-0908

(b) *Approved Course:*

Abatement Worker (contingent).

(2)(a) *Training Provider:* Advanced Environmental, Inc.

Address: 1216 Selby Ave., St. Paul, MN 55104

Contact: James D. Risimini

Phone: (612) 641-1101

(b) *Approved Courses:*

Abatement Worker (contingent).

Contractor/Supervisor (contingent).

Inspector/Management Planner (contingent).

(3)(a) *Training Provider:* Affiliated Environmental Services, Inc.

Address: 3606 Venice Rd., Sandusky, OH 44870

Contact: Jack Dauch

Phone: (419) 627-1976

(b) *Approved Course:*

Abatement Worker (contingent).

(4)(a) *Training Provider:* Alderink & Associates, Inc.

Address: 3221-3 Mile Rd., NW., Grand Rapids, MI 49504

Contact: Deborah C. Alderink

Phone: (616) 791-0730

(b) *Approved Courses:*

Abatement Worker (contingent).

Contractor/Supervisor (contingent).

(5)(a) *Training Provider:* Applied Environmental Sciences, Inc.

Address: Minneapolis Business & Technology Center, 511 11th Ave. So., Minneapolis, MN 55415

Contact: Franklin H. Dickson

Phone: (612) 339-5559

(b) *Approved Course:*

Abatement Worker (contingent).

(6)(a) *Training Provider:* Aries Environmental Services, Ltd.

Address: 1550 Hubbard, Batavia, IL 60510

Contact: Dennis Cesarotti

Phone: (312) 879-3006

(b) *Approved Course:*

Abatement Worker (contingent).

(7)(a) *Training Provider:* Asbestos Abatement, Inc.

Address: 2420 N. Grand River, Lansing, MI 48906

Contact: Shawn O'Callaghan

Phone: (517) 323-0053

(b) *Approved Course:*

Abatement Worker (contingent).

(8)(a) *Training Provider:* Asbestos Consulting Group, Inc.

Address: P.O. Box 3157, La Crosse, WI 54602-3157

Contact: Larry Lienau

Phone: (608) 782-1670

(b) *Approved Course:*

Contractor/Supervisor (contingent).

(9)(a) *Training Provider:* Asbestos Management, Inc. (AMI).

Address: 36700 South Huron, Suite 104, New Boston, MI 48164

Contact: Kary S. Amin

Phone: (313) 961-6135

(b) *Approved Courses:*

Contractor/Supervisor (contingent).

Inspector/Management Planner (full from 2/1/88).

(10)(a) *Training Provider:* Asbestos Training & Employment, Inc. (ATEI).

Address: 809 East 11th St., Michigan City, IN 46360

Contact: Bruce H. Connell

Phone: (219) 874-7348

(b) *Approved Courses:*

Abatement Worker (full from 5/18/88).

Contractor/Supervisor (full from 6/20/88).

Inspector/Management Planner (contingent).

(11)(a) *Training Provider:* Astesco Laboratory Incorporated.

Address: RR 1 Box 328, Reelsville, IN 46171

Contact: Donald Allen

Phone: (317) 672-8400

(b) *Approved Course:*

Abatement Worker (contingent).

(12)(a) *Training Provider:* BDN Industrial Hygiene Consultants.

Address: 8105 Valleywood Lane, Portage, MI 49002

Contact: Keith Nichols

Phone: (616) 329-1237

(b) *Approved Courses:*

Abatement Worker (contingent).

Contractor/Supervisor (contingent).

Inspector/Management Planner (full from 2/15/88).

(13)(a) *Training Provider:* Carnow, Conibear & Associates, Ltd.

Address: 333 West Wacker Dr., Suite 1400, Chicago, IL 60606

Contact: Victoria Musselman

Phone: (312) 782-4486

(b) *Approved Course:*

Abatement Worker (full from 2/29/88).

(14)(a) *Training Provider:* Clayton Environmental Consultants, Inc.

Address: 22345 Roethel Dr., Novi, MI 48050

Contact: Michael Coffman

Phone: (313) 344-1770

(b) *Approved Course:*

Inspector/Management Planner (full from 2/16/88).

(15)(a) *Training Provider:* Columbus Paraprofessional Institute Battelle Columbus Division.

Address: 505 King Ave., Columbus, OH 43201-2693

Contact: John Simpkins

Phone: (614) 424-6424

(b) *Approved Course:*

Inspector/Management Planner (full from 4/11/88).

(16)(a) *Training Provider:* Daniel J. Hartwig Associates, Inc.

Address: P.O. Box 31, Oregon, WI 53575-0031

Contact: Alice J. Seeliger

Phone: (808) 835-5781

(b) *Approved Course:*

Inspector/Management Planner (full from 4/18/88).

(17)(a) *Training Provider:* DeLisle Consulting & Laboratories, Inc.

Address: 2401 East Milham Ave.,

Kalamazoo, MI 49002

Contact: Mark DeLisle

Phone: (616) 343-9698

(b) *Approved Courses:*

Contractor/Supervisor (full from 10/20/87).

Inspector/Management Planner (full from 12/22/87).

(18)(a) *Training Provider:* Dore & Associates Contracting, Inc.

Address: 900 Harry S. Truman Parkway,

P.O. Box 146, Bay City, MI 48707

Contact: Joseph Goldring

Phone: (517) 684-8358

(b) *Approved Course:*

Abatement Worker (full from 6/27/88).

(19)(a) *Training Provider:*

Environmental Professionals, Inc.

Address: 1405 Newton St., Tallmadge, OH 44278

Contact: Timothy E. Walsh

Phone: (216) 633-4435

(b) *Approved Course:*

Contractor/Supervisor (contingent).

(20)(a) *Training Provider:* Foley Occupational Health Consulting.

Address: 4060 Echo Cove, Manitou Beach, MI 49253

Contact: E.D. Foley, Jr.

Phone: (517) 547-7399

(b) *Approved Course:*

Contractor/Supervisor (contingent).

(21)(a) *Training Provider:* Gandee & Associates, Inc.

Address: 4488 Mobile Dr., Columbus, OH 43220

Contact: Kurt Varga

Phone: (614) 459-8338

(b) *Approved Courses:*

Abatement Worker (contingent).



Contractor/Supervisor (contingent).  
(22)(a) *Training Provider*: Hazardous Materials Institute.

Address: 540 Frontage Rd., Northfield, IL 60093

Contact: Al Wilson  
Phone: (312) 501-2195

(b) *Approved Course*:

Contractor/Supervisor (contingent).

(23)(a) *Training Provider*: Heat and Frost Insulators Local 17 Apprentice Training Center.

Address: 3850 South Racine Ave., Chicago, IL 60609

Contact: John P. Shine  
Phone: (312) 247-1007

(b) *Approved Courses*:

Abatement Worker (full from 11/8/87).

Contractor/Supervisor (full from 3/22/88).

(24)(a) *Training Provider*: I.P.C. Chicago.

Address: 4309 West Henderson, Chicago, IL 60641

Contact: Robert G. Cooley  
Phone: (312) 975-3495

(b) *Approved Course*:

Abatement Worker (contingent).

(25)(a) *Training Provider*: Illinois Laborers' & Contractors' Training Program, Training Trust.

Address: Rural Route 3, Mount Sterling, IL 62353

Contact: Tony Romolo  
Phone: (217) 773-2741

(b) *Approved Courses*:

Abatement Worker (full from 2/1/88).

Contractor/Supervisor (full from 3/14/88).

(26)(a) *Training Provider*: Indiana Laborers' Training Trust Fund.

Address: P.O. Box 758, Bedford, IN 47421

Contact: Richard Fassino  
Phone: (812) 279-9751

(b) *Approved Courses*:

Abatement Worker (full from 2/22/88).

Contractor/Supervisor (contingent).

(27)(a) *Training Provider*: Indianapolis Center For Advanced Research, Inc.

Address: 611 North Capitol Ave., Indianapolis, IN 46204

Contact: William Berdnek Jr.  
Phone: (317) 262-5027

(b) *Approved Course*:

Inspector/Management Planner (full from 6/6/88).

(28)(a) *Training Provider*: Industrial Environmental Consultants.

Address: 2875 Northwind, Suite 113, East Lansing, MI 48823

Contact: James C. Fox  
Phone: (517) 332-7026

(b) *Approved Course*:

Inspector/Management Planner (contingent).

(29)(a) *Training Provider*: Kemron Environmental Services.

Address: 32740 Northwestern Hwy., Farmington Hills, MI 48018

Contact: Thomas J. Martin  
Phone: (313) 626-2426

(b) *Approved Courses*:

Contractor/Supervisor (contingent).  
Inspector/Management Planner (contingent).

(30)(a) *Training Provider*: Lepi Enterprises, Inc.

Address: 917 Main St., Dresden, OH 43821

Contact: James R. Lepi  
Phone: (614) 754-1162

(b) *Approved Course*:

Abatement Worker (contingent).

(31)(a) *Training Provider*: Lyle Laboratories.

Address: 1327 King Ave., Columbus, OH 43212

Contact: Terri L. Williams  
Phone: (614) 488-1022

(b) *Approved Course*:

Inspector/Management Planner (contingent).

(32)(a) *Training Provider*: Michigan Laborers Training Institute.

Address: 11155 South Beardslee Rd., Perry, MI 48872

Contact: Edwin H. McDonald  
Phone: (517) 625-4919

(b) *Approved Courses*:

Abatement Worker (full from 5/2/88).

Contractor/Supervisor (full from 5/6/88).

(33)(a) *Training Provider*: Midwest Center for Occupational Health and Safety.

Address: 640 Jackson St., St. Paul, MN 55101

Contact: Kathleen Vork  
Phone: (612) 221-3992

(b) *Approved Course*:

Inspector/Management Planner (full from 5/23/88).

(34)(a) *Training Provider*: Midwest Health Training.

Address: 3920 Central, Western Springs, IL 60558

Contact: H.C. Brown  
Phone: (312) 246-9527

(b) *Approved Course*:

Abatement Worker (full from 4/25/88).

(35)(a) *Training Provider*: Moraine Valley Community College.

Address: 10900 South 88th Ave., Palos Hills, IL 60465

Contact: Richard Kukac  
Phone: (312) 974-4300

(b) *Approved Course*:

Inspector/Management Planner (full from 2/9/88).

(36)(a) *Training Provider*: National Institute for Abatement Education.

Address: 5501 Williamsburg Way #305, Madison, WI 53719

Contact: Dean Leischow  
Phone: (608) 271-7281

(b) *Approved Courses*:

Abatement Worker (contingent).

Contractor/Supervisor (contingent).

(37)(a) *Training Provider*: Northern Safety Consultants, Inc.

Address: 1406 Lincoln Ave., Marquette, MI 49855

Contact: Christopher M. Baker  
Phone: (906) 228-5161

(b) *Approved Courses*:

Abatement Worker (full from 5/31/88).

Contractor/Supervisor (full from 5/31/88).

(38)(a) *Training Provider*: Nova Environmental Services.

Address: Suite 420 Hazeltine Gates, 1107 Hazeltine Blvd., Chaska, MN 55318

Contact: Steven B. Cummings  
Phone: (612) 448-8888

(b) *Approved Courses*:

Abatement Worker (contingent).

Contractor/Supervisor (contingent).

Inspector/Management Planner (contingent).

(39)(a) *Training Provider*: Nova Environmental, Inc.

Address: 704 Wesley, Ann Arbor, MI 48103

Contact: Kary S. Amin  
Phone: (313) 769-3585

(b) *Approved Courses*:

Abatement Worker (contingent).

Contractor/Supervisor (contingent).

Inspector/Management Planner (contingent).

(40)(a) *Training Provider*: Ohio Asbestos Workers Council.

Address: 1216 East McMillan St., Room 107, Cincinnati, OH 45206

Contact: Larry Briley  
Phone: (513) 221-5969

(b) *Approved Course*:

Contractor/Supervisor (full from 4/25/88).

(41)(a) *Training Provider*: Ohio Laborers' Training & Upgrading Trust Fund.

Address: 25721 Coshocton Rd., P.O. Box 218, Howard, OH 43028

Contact: John L. Railing  
Phone: (614) 599-7915

(b) *Approved Course*:

Contractor/Supervisor (contingent).

(42)(a) *Training Provider*: Professional Asbestos Labor Services, Inc.

Address: 2955 West 5th Ave., Gary, IN 46404

Contact: George Bradley  
Phone: (219) 949-5008

(b) *Approved Course*:



Abatement Worker (contingent).  
(43)(a) *Training Provider*: Professional Service Industries, Inc.  
Address: 510 East 22nd St., Lombard, IL 60148

Contact: W.K. Swartzendruben  
Phone: (312) 691-1490

(b) *Approved Course*:  
Inspector (full from 5/3/88).

(44)(a) *Training Provider*: S.Z. Mansdorf & Assoc., Inc.  
Address: 2000 Chestnut Blvd., Cuyahoga Falls, OH 44223-1323  
Contact: A.L. Lott  
Phone: (216) 928-5434

(b) *Approved Courses*:  
Contractor/Supervisor (full from 1/26/88).  
Inspector/Management Planner (contingent).

(45)(a) *Training Provider*: Safety Training of Illinois.  
Address: 1515 South Park, Springfield, IL 62704

Contact: S. David Farris  
Phone: (217) 787-9091

(b) *Approved Course*:  
Abatement Worker (full from 12/18/87).

(46)(a) *Training Provider*: South East Michigan Committee on Occupational Safety and Health (SEMCOSH).  
Address: 1550 Howard St., Detroit, MI 48216

Contact: Barbara Boylan  
Phone: (313) 961-3345

(b) *Approved Course*:  
Abatement Worker (contingent).

(47)(a) *Training Provider*: Testing Engineers & Consultants, Inc.  
Address: 1333 Rochester Rd., P.O. Box 249, Troy, MI 48099  
Contact: Karl D. Agee  
Phone: (313) 588-6200

(b) *Approved Course*:  
Inspector/Management Planner (contingent).

(48)(a) *Training Provider*: University of Cincinnati Medical Center Institute of Environmental Health Kettering Laboratory.

Address: 3223 Eden Ave., Cincinnati, OH 45267-0056

Contact: Susan L. Millman  
Phone: (517) 872-5733

(b) *Approved Courses*:  
Contractor/Supervisor (full from 10/20/87).

Inspector/Management Planner (full from 11/16/87).

(49)(a) *Training Provider*: University of Illinois at Chicago M.A.I.C. School of Public Health.

Address: 2035 Taylor, Chicago, IL 60612  
Contact: Tony Billotti  
Phone: (312) 996-5762

(b) *Approved Courses*:  
Abatement Worker (interim from 10/1/87 to 12/14/87).  
Abatement Worker (full from 4/5/88).  
Contractor/Supervisor (full from 10/1/87).

Inspector/Management Planner (full from 10/21/87).

(50)(a) *Training Provider*: University of Wisconsin-Extension.  
Address: 422 Lowell Hall, 610 Langdon St., Madison, WI 53703  
Contact: Neil DeClercq  
Phone: (608) 262-2111

(b) *Approved Courses*:  
Abatement Worker (full from 12/7/87).

Contractor/Supervisor (contingent).  
Inspector/Management Planner (full from 2/22/88).

Region VI—Dallas, TX

*Regional Asbestos Coordinator*: John West, 6t-Pt, EPA, Region VI, 1445 Ross Avenue, Dallas, TX 75202-2733. (214) 655-7244, (FTS) 255-7244.

*List of Approved Courses*: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VI training courses and contact points for each, are as follows:

(1)(a) *Training Provider*: Asbestos Surveys and Training, Inc.

Address: Three Riverway, Suite 760, Houston, TX 77056  
Contact: Jesse Ashley  
Phone: (713) 623-0025

(b) *Approved Course*:  
Abatement Worker (full from 10/22/87).

(2)(a) *Training Provider*: CERL, Inc.  
Address: 1611 Calle Lorca, Suite B, Santa Fe, NM 87501  
Contact: Michael Curtis  
Phone: (505) 988-4143

(b) *Approved Courses*:  
Contractor/Supervisor (contingent).  
Inspector/Management Planner (contingent).

(3)(a) *Training Provider*: Carpenters Apprenticeship Training School.  
Address: 8505 Glen Vista, Houston, TX 77061

Contact: S.C. Strunk, Jr.  
Phone: (713) 641-1011

(b) *Approved Courses*:  
Abatement Worker (contingent).  
Abatement Worker Refresher Course (contingent).

(4)(a) *Training Provider*: Certified Asbestos Training Institute, Inc.  
Address: 4202 Argentina Cir., Pasadena, TX 77504

Contact: Maurice Hoffpouwer  
Phone: (713) 487-3155

(b) *Approved Course*:  
Abatement Worker (contingent).  
(5)(a) *Training Provider*: Critical Environmental Training Center.  
Address: 5815 Gulf Fwy., Houston, TX 77023

Contact: Charles M. Flanders  
Phone: (713) 921-4600

(b) *Approved Courses*:  
Abatement Worker (full from 4/14/88).  
Contractor/Supervisor (contingent).  
Inspector/Management Planner (full from 3/21/88).

(6)(a) *Training Provider*: Environmental Institute.  
Address: P.O. Box 270278, Dallas, TX 75227

Contact: R. Michael Wheeler  
Phone: (214) 324-0774

(b) *Approved Courses*:  
Contractor/Supervisor (full from 1/11/88).  
Inspector/Management Planner (full from 1/25/88).

(7)(a) *Training Provider*: Environmental Monitoring Service, Inc. (EMS).  
Address: 13008 Amarillo Ave., Austin, TX 78729

Contact: Rick Pruett  
Phone: (512) 335-9116

(b) *Approved Courses*:  
Abatement Worker (contingent).  
Contractor/Supervisor (contingent).  
(8)(a) *Training Provider*: Fort Worth Independent School District.

Address: 3210 West Lancaster, Fort Worth, TX 76107  
Contact: H.D. Duncan  
Phone: (817) 336-8311

(b) *Approved Courses*:  
Abatement Worker (contingent).  
Abatement Worker Refresher Course (contingent).

(9)(a) *Training Provider*: GEBCO Associates, Inc.  
Address: 805-A Elizabeth Dr., Bedford, TX 76022

Contact: Ed Kirch  
Phone: (817) 268-4006

(b) *Approved Courses*:  
Abatement Worker (interim from 4/15/87 to 8/19/87).  
Abatement Worker (full from 8/20/87).

Contractor/Supervisor (contingent).  
Contractor/Supervisor Refresher Course (contingent).  
Inspector/Management Planner (full from 3/7/88).

Inspector/Management Planner Refresher Course (contingent).



(10)(a) *Training Provider:* International Association of Heat and Frost Insulators, Asbestos Workers Union Local 22.  
Address: 3219 Pasadena Blvd., Pasadena, TX 77503  
Contact: Owen Tilley  
Phone: (713) 473-0888

(b) *Approved Courses:*  
Abatement Worker (interim from 10/1/87 to 12/14/87).  
Abatement Worker (full from 3/22/88).  
Abatement Worker Refresher Course (contingent).  
Contractor/Supervisor (contingent).

(11)(a) *Training Provider:* Lamar University, Hazardous Materials Program.  
Address: P.O. Box 10008, Beaumont, TX 77710  
Contact: Marion Foster  
Phone: (409) 880-2369

(b) *Approved Course:*  
Contractor/Supervisor (contingent).

(12)(a) *Training Provider:* Louisiana Laborers Union—AGC Training Fund.  
Address: P.O. Box 376, Livonia, LA 70755-0376  
Contact: Jamie Peers  
Phone: (504) 637-2311

(b) *Approved Course:*  
Abatement Worker (contingent).

(13)(a) *Training Provider:* Louisiana State University, Agricultural and Mechanical College.  
Address: 361 Pleasant Hall, Baton Rouge, LA 70803-1520  
Contact: George Smith  
Phone: (504) 388-6621

(b) *Approved Courses:*  
Abatement Worker (full from 1/1/88).  
Contractor/Supervisor (full from 4/7/88).

Inspector/Management Planner (full from 1/18/88).

(14)(a) *Training Provider:* Meador-Wright and Associates, Inc.  
Address: 5520 LBJ Freeway, Suite 204, Dallas, TX 75240  
Contact: Paul Teel  
Phone: (214) 788-1804

(b) *Approved Course:*  
Inspector (contingent).

(15)(a) *Training Provider:* Moore-Norman Area Vocational Training School.  
Address: 4701-12th Ave., NW., Norman, OK 73069  
Contact: Frank Coulter  
Phone: (405) 364-5763

(b) *Approved Courses:*  
Abatement Worker (full from 5/16/88).  
Contractor/Supervisor (full from 5/16/88).

Inspector/Management Planner (full from 4/4/88).

(16)(a) *Training Provider:* Nelson/Imel, Inc.  
Address: 3900 Morrison Cir., Norman, OK 73072  
Contact: Deborah Nelson  
Phone: (405) 364-3278

(b) *Approved Course:*  
Abatement Worker (contingent).

(17)(a) *Training Provider:* Oconor-McMahon, Inc.  
Address: 1210 Riverbend Dr., Suite 202, Dallas, TX 75247  
Contact: James M. Walley  
Phone: (214) 638-7322

(b) *Approved Course:*  
Abatement Worker (contingent).

(18)(a) *Training Provider:* Occupational Safety Training Institute.  
Address: 4335 South Main # B, Stafford, TX 77477  
Contact: Eva Bonilla  
Phone: (713) 261-0212

(b) *Approved Courses:*  
Abatement Worker (contingent).  
Contractor/Supervisor (contingent).

(19)(a) *Training Provider:* Region 6 Environmental Training.  
Address: 13900 I.H. 35 North, Suite 2-1, Austin, TX 78728  
Contact: Andrew Ramvel  
Phone: (512) 251-2637

(b) *Approved Courses:*  
Abatement Worker (contingent).  
Contractor/Supervisor (contingent).

(20)(a) *Training Provider:* SETCO Safety, ET.  
Address: 1308 Upland, Houston, TX 77043  
Contact: James Hoffpauir  
Phone: (713) 468-4393

(b) *Approved Course:*  
Abatement Worker (contingent).

(21)(a) *Training Provider:* Southwest Environmental Institute.  
Address: P.O. Box 295, Abilene, TX 79604  
Contact: Tom Dye  
Phone: (915) 691-0189

(b) *Approved Course:*  
Abatement Worker (contingent).

(22)(a) *Training Provider:* Texas Engineering Extension Service Building Codes Inspection Training Div.  
Address: Texas A&M University System, College Station, TX 77843-8000  
Contact: Richard Thompson  
Phone: (409) 845-6682

(b) *Approved Courses:*  
Abatement Worker (full from 9/28/87).  
Contractor/Supervisor (interim from 5/26/86 to 9/13/87).  
Contractor/Supervisor (full from 9/14/87).

Inspector/Management Planner (full from 10/19/87).

(23)(a) *Training Provider:* Tulane University, School of Public Health and Tropical Medicine, Dept. of Environmental Health Sciences.  
Address: 1430 Tulane Ave., New Orleans, LA 70112  
Contact: Dr. Shau-Wong-Chang, Ph.D., CIH  
Phone: (504) 588-5374

(b) *Approved Courses:*  
Contractor/Supervisor (interim from 3/17/87 to 9/14/87).  
Contractor/Supervisor (full from 9/15/87).

(24)(a) *Training Provider:* University of Arkansas at Little Rock Biology Department.  
Address: 33rd & University, Little Rock, AR 72204  
Contact: Phyllis Moore  
Phone: (501) 569-3270

(b) *Approved Course:*  
Inspector/Management Planner (contingent).

(25)(a) *Training Provider:* University of Texas at Arlington Bureau of Engineering Research.  
Address: P.O. Box 19020, Arlington, TX 76019  
Contact: Ernest C. Crosby  
Phone: (817) 273-2557

(b) *Approved Courses:*  
Contractor/Supervisor (full from 7/14/86).  
Inspector/Management Planner (full from 10/19/87).

(26)(a) *Training Provider:* Veltmann Engineering.  
Address: 2403 Emerson Ct., Midland, TX 79705  
Contact: Clyde Veltmann  
Phone: (915) 682-6072

(b) *Approved Courses:*  
Abatement Worker (contingent).  
Contractor/Supervisor (contingent).

(27)(a) *Training Provider:* Young Insulation Group of Amarillo, Inc.  
Address: P.O. Box 5098, Amarillo, TX 79117  
Contact: Dennis C. Clayton  
Phone: (806) 372-4329

(b) *Approved Courses:*  
Abatement Worker (contingent).  
Abatement Worker Refresher Course (contingent).

Region VII—Kansas City, KS

*Regional Asbestos Coordinator:*  
Wolfgang Brandner, EPA Region VII, 726 Minnesota Ave., Kansas City, KS 66101, (913) 236-2834, (FTS) 757-2834.

*List of Approved Courses:* The following training courses have been approved by EPA. The courses are listed



under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VII training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* AGC—Eastern Missouri Laborers' Joint Training Fund.

Address: Rt. 1 Box 79H, High Hill, MO 63350

Contact: Jerald Pelker  
Phone: (314) 585-2391

(b) *Approved Course:*  
Abatement Worker (full from 1/19/88).

(2)(a) *Training Provider:* Aerostat Asbestos Engineering Consulting, Inc.

Address: P.O. Box 12037, Kansas City, KS 66112

Contact: Damir Joseph Stimac  
Phone: (913) 788-3307

(b) *Approved Courses:*  
Abatement Worker (full from 5/9/88).  
Contractor/Supervisor (full from 5/9/88).

Inspector/Management Planner (contingent).

(3)(a) *Training Provider:* Asbestos Consulting Testing (ACT).

Address: 14953 West 101st Ter., Lenexa, KS 66215

Contact: Jim Pickel  
Phone: (913) 492-1337

(b) *Approved Courses:*  
Abatement Worker (full from 1/25/88).

Contractor/Supervisor (full from 1/25/88).

(4)(a) *Training Provider:* CHART Services, Ltd.

Address: 4725 Merle Hay Rd., Suite 214, Des Moines, IA 50322

Contact: Mary A. Finn  
Phone: (515) 276-3642

(b) *Approved Courses:*  
Abatement Worker (full from 11/17/87).

Contractor/Supervisor (full from 11/17/87).

Inspector/Management Planner (full from 2/22/88).

(5)(a) *Training Provider:* Construction Laborers Building Corporation.

Address: Box 34549, Omaha, NE 68134

Contact: Jack Budd  
Phone: (402) 572-0826

(b) *Approved Course:*  
Abatement Worker (full from 11/2/87).

(6)(a) *Training Provider:* Enviro-Impact Inspections.

Address: 1515 North Wason, Suite 213, St. Louis, MO 63132

Contact: Denis Boles

Phone: (314) 426-0087

(b) *Approved Courses:*  
Abatement Worker (contingent).  
Contractor/Supervisor (contingent).

(7)(a) *Training Provider:*

Environmental Technology, Inc.

Address: 4315 Merriam Dr., Overland Park, KS 66203

Contact: Mike Franano

Phone: (913) 236-5040

(b) *Approved Course:*  
Abatement Worker (full from 2/29/88).

(8)(a) *Training Provider:* Flint Hills Area Vocational-Technical School.

Address: 3301 West 18th Ave., Emporia, KS 66801

Contact: Jim Krueger

Phone: (316) 342-6404

(b) *Approved Course:*  
Abatement Worker (full from 3/7/88).

(9)(a) *Training Provider:* Greater Kansas City Laborers Training Fund.

Address: 8944 Kaw Dr., Kansas City, KS 66111

Contact: James D. Barnett

Phone: (913) 441-6100

(b) *Approved Courses:*  
Abatement Worker (full from 2/1/88).  
Contractor/Supervisor (full from 5/2/88).

(10)(a) *Training Provider:* Hall-Kimbrell Environmental Services.

Address: 4840 West 15th St., Lawrence, KS 66046

Contact: Alice Hart

Phone: (913) 749-2381

(b) *Approved Courses:*  
Abatement Worker (full from 8/17/87).

Contractor/Supervisor (full from 8/17/87).

Inspector/Management Planner (full from 8/17/87).

Project Designer (full from 8/17/87).

(11)(a) *Training Provider:* Insulators and Asbestos Workers Midwest States Health and Training Council.

Address: Rural Route #2, Wahoo, NE 68066

Contact: Ray Richmond

Phone: (402) 443-4810

(b) *Approved Courses:*  
Abatement Worker (contingent).  
Contractor/Supervisor (contingent).

(12)(a) *Training Provider:* Iowa Laborers District Council Training Fund.

Address: 5806 Meredith Dr., Des Moines, IA 50322

Contact: Jack G. Jones

Phone: (515) 272-6965

(b) *Approved Course:*  
Abatement Worker (full from 2/22/88).

(13)(a) *Training Provider:* Kansas Construction Laborers' Training Trust Fund.

Address: 2430 Marlatt Ave., Manhattan, KS 66502

Contact: Fred Tipton

Phone: (913) 539-7902

(b) *Approved Courses:*  
Abatement Worker (full from 1/5/88).  
Contractor/Supervisor (full from 5/2/88).

(14)(a) *Training Provider:* MITON, Inc.

Address: P.O. Box 1582, Branson, MO 65616

Contact: Tony Williams

Phone: (417) 335-6743

(b) *Approved Course:*  
Inspector/Management Planner (full from 3/14/88).

(15)(a) *Training Provider:* Maple Woods Community College.

Address: 10771 Ambassador Dr., Kansas City, MO 64133

Contact: James C. Lauer

Phone: (816) 436-6500

(b) *Approved Courses:*  
Abatement Worker (full from 2/1/88).  
Contractor/Supervisor (full from 3/28/88).

Inspector/Management Planner (full from 5/2/88).

(16)(a) *Training Provider:* Mayhew Environmental Training Associates, Inc. (META).

Address: P.O. Box 1961, Lawrence, KS 66044

Contact: Brad Mayhew

Phone: (913) 842-6382

(b) *Approved Courses:*  
Abatement Worker (full from 10/20/87).

Contractor/Supervisor (full from 10/20/87).

(17)(a) *Training Provider:* Midwest Environmental Testing & Training.

Address: 3500 Northeast Independence Ave., Lee's Summit, MO 64064

Contact: Steve Minshall

Phone: (816) 525-6681

(b) *Approved Courses:*  
Abatement Worker (full from 5/9/88).  
Contractor/Supervisor (full from 5/9/88).

(18)(a) *Training Provider:* State of Iowa Department of Education.

Address: Grimes State Office Building, Des Moines, IA 50319-0146

Contact: C. Milton Wilson

Phone: (515) 281-4743

(b) *Approved Course:*  
Inspector/Management Planner (full from 4/4/88).

(19)(a) *Training Provider:* University of Kansas, Division of Continuing Education.

Address: 6600 College Blvd., Suite 315, Overland Park, KS 66211

Contact: Lani Himegarner



Phone: (913) 491-0181

(b) *Approved Courses:*

Abatement Worker (full from 7/27/87).

Contractor/Supervisor (interim from 6/1/85 to 7/26/87).

Contractor/Supervisor (full from 7/27/88).

Inspector/Management Planner (full from 10/26/87).

Region VIII—Denver, CO

*Regional Asbestos Coordinator:* David Combs, [8AT-TS], EPA, Region VIII, 1 Denver Place, 999-18th St., Room 1300, Denver, CO 80202-2413. (303) 293-1744, (FTS) 564-1744.

*List of Approved Courses:* The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VIII training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Colorado State University Dept. of Industrial Sciences, Office of Research, Development, and Training.

Address: Fort Collins, CO 80523

Contact: Birgit Wolff

Phone: (303) 491-1551

(b) *Approved Course:*

Inspector/Management Planner (full from 5/23/88).

(2)(a) *Training Provider:* Energy Insulation, Inc.

Address: P.O. Box 1996, Casper, WY 82602

Contact: David K. Fox

Phone: (307) 473-1247

(b) *Approved Course:*

Abatement Worker (contingent).

(3)(a) *Training Provider:* Envir-o-tech.

Address: 300 Moore Ln., Billings, MT 59102

Contact: Les Nelson

Phone: (800) 225-4899

(b) *Approved Course:*

Abatement Worker (contingent).

(4)(a) *Training Provider:* Hager Laboratories, Inc.

Address: 11234 East Caley Ave., Englewood, CO 80111

Contact: Steve Herron

Phone: (303) 790-2727

(b) *Approved Courses:*

Abatement Worker (contingent).

Contractor/Supervisor (contingent).

Inspector/Management Planner (full from 5/2/88).

(5)(a) *Training Provider:* Industrial Health, Inc.

Address: 640 East Wilmington Ave., Salt Lake City, UT 84106

Contact: Donald E. Marano

Phone: (801) 466-2223

(b) *Approved Course:*

Contractor/Supervisor (contingent).

(6)(a) *Training Provider:* Major Safety Inc.

Address: 6390 Joyce Dr. #201, Golden, CO 80403

Contact: Tom Major

Phone: (303) 424-7874

(b) *Approved Courses:*

Abatement Worker (contingent).

Contractor/Supervisor (contingent).

Inspector/Management Planner (contingent).

Project Designer (contingent).

(7)(a) *Training Provider:* Misers

Inspection & Training, Inc.

Address: 1600 South Cherokee St.,

Denver, CO 80223

Contact: Michael DiRito

Phone: (303) 761-8860

(b) *Approved Courses:*

Abatement Worker (contingent).

Contractor/Supervisor (contingent).

(8)(a) *Training Provider:* NATEC

International.

Address: 2761 West Oxford Ave. #7,

Englewood, CO 80110

Contact: James Maxwell

Phone: (303) 825-8513

(b) *Approved Course:*

Abatement Worker (contingent).

(9)(a) *Training Provider:* Northern

Engineering and Testing, Inc.

Address: 600 South 25th St., P.O. Box

30615, Billings, MT 59107

Contact: Kathleen Smit

Phone: (406) 248-9161

(b) *Approved Course:*

Abatement Worker (full from 12/8/

87).

(10)(a) *Training Provider:* Power

Masters, Inc.

Address: 13205 South State St., Draper,

UT 84020

Contact: Debora Bastian

Phone: (801) 571-9321

(b) *Approved Course:*

Abatement Worker (contingent).

(11)(a) *Training Provider:* Rocky

Mountain Center for Occupational and

Environmental Health, University of

Utah.

Address: Building 512, Salt Lake City,

UT 84112

Contact: Jeffery Lee

Phone: (801) 581-5710

(b) *Approved Courses:*

Contractor/Supervisor (full from 11/

16/87).

Contractor/Supervisor Refresher

Course (contingent).

Inspector/Management Planner (full from 2/8/88).

(12)(a) *Training Provider:* South Dakota State University College of Engineering.

Address: Box 2218, Brookings, SD 57007-0597

Contact: James Ceglian

Phone: (605) 688-4101

(b) *Approved Courses:*

Contractor/Supervisor (contingent).

Inspector/Management Planner

(contingent).

Region IX—San Francisco, CA

*Regional Asbestos Coordinator:* Jo

Ann Semones, [T-52], EPA, Region IX,

215 Fremont St., San Francisco, CA

94105. (415) 974-7290, (FTS) 454-7290.

*List of Approved Courses:* The following training courses have been

approved by EPA. The courses are listed

under (b). This approval is subject to the

level of certification indicated after the

course name. Training Providers are

listed in alphabetical order and do not

reflect a prioritization. Approvals for

Region IX training courses and contact

points for each, are as follows:

(1)(a) *Training Provider:* ABMS/Excel

Environmental, Inc.

Address: 5506 San Pablo Ave., Oakland,

CA 94608

Contact: Otis Wong

Phone: (415) 547-7144

(b) *Approved Courses:*

Abatement Worker (contingent).

Contractor/Supervisor (contingent).

(2)(a) *Training Provider:* Center for

Accelerated Learning.

Address: 400 Buck Ave., Suite G,

Vacaville, CA 95688

Contact: David Esparza

Phone: (707) 446-7996

(b) *Approved Course:*

Inspector/Management Planner

(contingent).

(3)(a) *Training Provider:* Dan Napier

and Associates.

Address: 15342 Hawthorne Blvd., Suite

207, Lawndale, CA 90260-2105

Contact: Dan Napier

Phone: (214) 316-1058

(b) *Approved Course:*

Abatement Worker (contingent).

(4)(a) *Training Provider:* Diagnostic

Engineering, Inc.

Address: 55 West Sierra Madre Blvd.,

Sierra Madre, CA 91024

Contact: Jane P. Rowcliffe

Phone: (818) 355-8011

(b) *Approved Courses:*

Contractor/Supervisor (contingent).

Inspector/Management Planner

(contingent).

(5)(a) *Training Provider:*

Environmental Sciences.



Address: 375 South Meyer, Tucson, AZ 85701

Contact: Paula Keyes  
Phone: (602) 792-0097

(b) *Approved Course:*  
Inspector/Management Planner (full from 10/5/87).

(6)(a) *Training Provider:* Hawaii Laborers' Training School.

Address: P.O. Box 457, Aiea, HI 96701  
Contact: Norman Jimeno  
Phone: (808) 488-6161

(b) *Approved Course:*  
Abatement Worker (contingent).

(7)(a) *Training Provider:* Insulators and Asbestos Industry of Northern California.

Address: 2829 Fillmore St., Alameda, CA 94501

Contact: Michael R. Mellin  
Phone: (415) 522-7048

(b) *Approved Course:*  
Abatement Worker (contingent).

(8)(a) *Training Provider:* International Technology Corporation.

Address: 336 West Anaheim St., Wilmington, CA 90744

Contact: Keith Soebe  
Phone: (213) 830-1781

(b) *Approved Courses:*  
Abatement Worker (contingent).  
Contractor/Supervisor (contingent).

(9)(a) *Training Provider:* KELLCO Training Institute.

Address: 44814 Osgood Rd., Fremont, CA 94539

Contact: Charles W. Kellogg  
Phone: (415) 651-7401

(b) *Approved Courses:*  
Abatement Worker (contingent).  
Contractor/Supervisor (contingent).

(10)(a) *Training Provider:* Laborers Training & Retraining Trust Fund for Northern California.

Address: 21321 San Ramon Valley Blvd., San Ramon, CA 94583

Contact: Marvin D. Johnson  
Phone: (415) 828-2513

(b) *Approved Course:*  
Abatement Worker (contingent).

(11)(a) *Training Provider:* Laborers Training and Trust Fund for Southern California.

Address: P.O. Box 76, Anza, CA 92306-0076

Contact: Mary Lacy  
Phone: (714) 763-4341

(b) *Approved Course:*  
Abatement Worker (contingent).

(12)(a) *Training Provider:* MED-TOX Associates, Inc.

Address: 1431 Warner Ave., Suite A, P.O. Box 2054, Tustin, CA 92681

Contact: Linda Cassidy  
Phone: (714) 259-0620

(b) *Approved Courses:*

Abatement Worker (contingent).  
Contractor/Supervisor (contingent).  
Inspector (contingent).

(13)(a) *Training Provider:* National Abatement Technology Employment Center (NATEC).

Address: 13692 Newhope Ave., Garden Grove, CA 92643

Contact: Ronald Sandlin  
Phone: (714) 530-0407

(b) *Approved Courses:*  
Abatement Worker (contingent).  
Contractor/Supervisor (contingent).

(14)(a) *Training Provider:* National Institute for Asbestos Training.

Address: 1019 West Manchester Blvd., Inglewood, CA 90301

Contact: Jim McFarland  
Phone: (213) 645-4516

(b) *Approved Courses:*  
Abatement Worker (full from 12/7/87).

Contractor/Supervisor (full from 12/7/87).

(15)(a) *Training Provider:* National Institute for Asbestos & Hazardous Waste Management.

Address: 1019 West Manchester Blvd., Inglewood, CA 90301

Contact: Paul Jackson  
Phone: (213) 645-4516

(b) *Approved Course:*  
Inspector/Management Planner (contingent).

(16)(a) *Training Provider:* Pacific Asbestos Information Center, U.C. Extension.

Address: 2223 Fulton St., Berkeley, CA 94720

Contact: Debra Dobin  
Phone: (415) 643-7143

(b) *Approved Courses:*  
Contractor/Supervisor (full from 2/2/87).

Inspector/Management Planner (full from 11/16/87).

(17)(a) *Training Provider:* The Asbestos Institute.

Address: 2701 East Camelback #381, Phoenix, AZ 85016

Contact: William T. Cavness  
Phone: (602) 381-0896

(b) *Approved Courses:*  
Abatement Worker (contingent).  
Contractor/Supervisor (contingent).  
Inspector/Management Planner (contingent).

(18)(a) *Training Provider:* University of Southern California Institute of Safety and Systems Management.

Address: University Gardens, 3500 South Figueroa #202, Los Angeles, CA 90007

Contact: James O. Pierce  
Phone: (213) 743-6523

(b) *Approved Course:*

Inspector/Management Planner (contingent).

Region X—Seattle, WA

*Regional Asbestos Coordinator:*  
Walter Jasper, EPA, Region X, 1200 Sixth Ave. (AT-083), Seattle, WA 98101.  
(206) 442-4762, (FTS) 399-2870.

*List of Approved Courses:* The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region X training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Certified Industrial Hygiene Services, Inc.

Address: 911 Western Ave., Suite 206, Seattle, WA 98104

Contact: Eileen Kirkpatrick  
Phone: (206) 783-9506

(b) *Approved Course:*  
Inspector (contingent).

(2)(a) *Training Provider:* Engineering Continuing Education University of Washington.

Address: GG-13, Seattle, WA 98195

Contact: Creighton Depew

Phone: (206) 543-5339

(b) *Approved Course:*  
Inspector/Management Planner (full from 2/8/88).

(3)(a) *Training Provider:* Environmental Health Sciences Lake Washington Vo-Tech.

Address: 11605 132nd Avenue NE., Kirkland, WA 98034

Contact: Dave Rodewald

Phone: (206) 828-5643

(b) *Approved Course:*  
Inspector/Management Planner (full from 4/11/88).

(4)(a) *Training Provider:* Environmental Management, Inc.

Address: P.O. Box 91477, Anchorage, AK 99509

Contact: Kenneth Johnson  
Phone: (907) 272-8056

(b) *Approved Course:*  
Inspector/Management Planner (full from 4/18/88).

(5)(a) *Training Provider:* Hazcon, Inc., Health Hazard Control Services.

Address: 5950 6th Ave., S., Suite 216, Seattle, WA 98108

Contact: Mike Krause

Phone: (206) 763-7364

(b) *Approved Course:*  
Inspector/Management Planner (full from 4/4/88).

(6)(a) *Training Provider:* Northwest Envirocon, Inc.



Address: 181 A St., Washougal, WA 98671

Contact: Randy Hall  
Phone: (206) 835-8576

(b) *Approved Course:*  
Inspector/Management Planner  
(contingent).

(7)(a) *Training Provider:* PBS  
Environmental Building Consultant, Inc.  
Address: 1220 South West Morrison,  
Portland, OR 97205  
Contact: John Perkins  
Phone: (503) 248-1939

(b) *Approved Course:*  
Inspector/Management Planner (full  
from 3/14/88).

(8)(a) *Training Provider:* University of  
Alaska, Mining and Petroleum Training  
Services.

Address: 155 Smith Way, Suite 104,  
Soldotna, AK 99669  
Contact: Dennis D. Steffy  
Phone: (907) 262-2788

(b) *Approved Course:*  
Inspector/Management Planner (full  
from 4/11/88).

#### V. List of EPA-Accredited Bulk Sample Analysis Laboratories

Section 206(d) of Title II states that EPA must provide for the development of an accreditation program through the National Bureau of Standards (NBS) for laboratories conducting analysis of bulk samples of asbestos-containing materials by October 17, 1987. Due to a delay in funding, the NBS program will not be fully operational until October 1988. In order to provide schools with a listing of accredited laboratories, EPA has established the "Interim Asbestos Bulk Sample Quality Assurance Program." EPA announced the program in the *Federal Register* of September 30, 1987 (52 FR 33470).

The listing of laboratories has been developed from the results of the final round of the EPA Interim Accreditation Program and is compiled by State within each EPA Region. The laboratories have received interim accreditation from EPA by successfully meeting the requirements of the EPA Interim Asbestos Bulk Sample Quality Assurance Program in the April 1988 round of the program.

LEAs should note that the laboratory listing is continually being updated as laboratories are accredited by NBS. The NBS evaluation may result in laboratories either being added or deleted from the listing as the accreditation process is completed. The NBS evaluation process will begin in October 1988. EPA will maintain current listings of the accredited laboratories. LEAs should confirm a laboratory's accredited status by contacting both the

laboratory and EPA. An up-to-date listing of a laboratory's accredited status may be obtained by phoning (202) 554-1404 or contacting the local EPA Regional Asbestos Coordinator.

EPA is examining the feasibility of developing an "electronic bulletin board" for the purpose of providing weekly updates on recent NBS accreditation actions. Further information on this subject will be made available in November 1988.

#### EPA Approved Laboratories

##### Region I—Boston, MA

*Regional Asbestos Coordinator:*  
Allison Roberts, EPA, Region I, Air and  
Management Division (APT-2311), JFK  
Federal Building, Boston, MA 02203,  
(617) 565-3273 (FTS) 835-3273.

(1) *Laboratory:* ACMAT.

Address: 116 Stoner Dr., West Hartford,  
CT 06107

Contact: Arthur C. Cosmas  
Phone: (203) 289-6493

(2) *Laboratory:* AXIOM Laboratories.  
Address: 97 Ocean Dr., E., Stamford, CT  
06902

Contact: Sally E. Reffner  
Phone: (203) 356-8977

(3) *Laboratory:* Aetna Life & Casualty,  
Engineering Department W101.

Address: 151 Farmington Ave., Hartford,  
CT 06156

Contact: Edward B. Engel  
Phone: (203) 683-3665

(4) *Laboratory:* Air Quality  
Consultants.

Address: 406 Libbey Parkway,  
Weymouth, MA 02189

Contact: John E. O'Malley  
Phone: (617) 337-7320

(5) *Laboratory:* Alliance Technologies  
Corp., Air Quality Assessments.

Address: 213 Burlington Rd., Medford,  
MA 01730

Contact: David R. Cogley  
Phone: (617) 275-5444

(6) *Laboratory:* Analytical Testing  
Services.

Address: 180 Weeden St., Pawtucket, RI  
02860-1804

Contact: Robert F. Weisberg  
Phone: (401) 723-7978

(7) *Laboratory:* Applied Occupational  
Health Systems.

Address: 29 River Rd., Suite 18, Concord,  
NH 03301

Contact: Richard R. Kretovich  
Phone: (603) 228-3610

(8) *Laboratory:* Axiom Laboratories.

Address: 97 Ocean Dr., E., Stamford, CT  
06904

Contact: John A. Reffner  
Phone: (203) 348-8098

(9) *Laboratory:* Balsam Environmental  
Consultants, Inc.

Address: 59 Stiles Rd., Salem, NH 03079  
Contact: Tara E. Smith  
Phone: (603) 893-0616

(10) *Laboratory:* Barnes and Jarvis,  
Inc.

Address: 216 Tremont St., Boston, MA  
02116

Contact: Linda Goudreau  
Phone: (617) 542-6521

(11) *Laboratory:* Baron Consulting Co.  
Analytical Services.

Address: P.O. Box 663, Orange, CT 06477  
Contact: Harry Agahigian  
Phone: (203) 874-5678

(12) *Laboratory:* Briggs Associates,  
Inc.

Address: 400 Hingham St., Rockland,  
MA 02370

Contact: James Litrides  
Phone: (617) 871-6040

(13) *Laboratory:* Brooks Laboratories,  
Inc.

Address: 44 Codfish Lane, Weston, CT  
06883

Contact: Margaret Y. Brooks  
Phone: (203) 226-6970

(14) *Laboratory:* CON-TEST, Inc.

Address: 126 Shaker Rd., East  
Longmeadow, MA 01028

Contact: Thomas E. Veratti  
Phone: (413) 525-1198

(15) *Laboratory:* CT State Dept. of  
Health Lab.

Address: P.O. Box 1689, Hartford, CT  
06101

Contact: Janet B. Kapish  
Phone: (203) 566-5626

(16) *Laboratory:* Certified Engineering  
& Testing Co., Inc.

Address: 25 Mathewson Dr., Weymouth,  
MA 02189

Contact: Glenn Sylvester  
Phone: (617) 337-7887

(17) *Laboratory:* Certified Engineering  
& Testing Co., Inc.

Address: 400 Smith St., Providence, RI  
02908

Contact: Deborah A. Pereira  
Phone: (401) 831-9090

(18) *Laboratory:* Chem Scope Inc.

Address: P.O. Box 389, Fair Haven  
Station, New Haven, CT 06513

Contact: Ronald D. Arena

Phone: (203) 468-0055

(19) *Laboratory:* Covino

Environmental Consultants, Inc.

Address: 12 Walnut Hill Park, Woburn,  
MA 01801

Contact: Samuel J. Covino, Jr.

Phone: (617) 933-2555



(20) *Laboratory:* Dennison  
Environmental, Inc.

Address: 35H Industrial Pkwy., Woburn,  
MA 01801

Contact: James E. Dennison  
Phone: (617) 932-9400

(21) *Laboratory:* EHL Division of  
Cigna Corp.

Address: 94 Murphy Rd., Hartford, CT  
06114

Contact: Jim Kenny  
Phone: (203) 522-3814

(22) *Laboratory:* ESA Laboratories.

Address: 43 Wiggins Ave., Bedford, MA  
01730

Contact: Reg Griffin  
Phone: (617) 275-0100

(23) *Laboratory:* Eastern Analytical  
Laboratories, Inc.

Address: 149 Rangeway Rd., North  
Billerica, MA 01862

Contact: Drew Killius  
Phone: (617) 272-5212

(24) *Laboratory:* Enviro-Lab, Inc.

Address: 154 Grove St., Chicopee, MA  
01020

Contact: Peter R. Tuttle  
Phone: (413) 592-0030

(25) *Laboratory:* Enviromed Services,  
Inc.

Address: 25 Science Park, New Haven,  
CT 06511

Contact: William G. Oldman  
Phone: (203) 786-5580

(26) *Laboratory:* Environmental  
Associates, Inc.

Address: 1222 Fairfield Ave., Bridgeport,  
CT 06605

Contact: Ralph B. Wiech  
Phone: (203) 368-8064

(27) *Laboratory:* Environmental Field  
Services, Inc.

Address: 63 Elm St., Topsham, ME 04086

Contact: Joanna L. Eaton  
Phone: (207) 725-4112

(28) *Laboratory:* Envirosciences, Inc.

Address: 220 Tollgate Rd., Warwick, RI  
02886

Contact: Theodore Lemek  
Phone: (401) 737-0633

(29) *Laboratory:* Hitchcock Gas  
Engine Co.

Address: 50 Cross St., Bridgeport, CT  
06610

Contact: John F. Sieckhaus  
Phone: (203) 334-4812

(30) *Laboratory:* Hub Testing  
Laboratory.

Address: 95 Beaver St., Waltham, MA  
02154

Contact: Fred Boyle  
Phone: (617) 893-8330

(31) *Laboratory:* Hunter  
Environmental Sciences, Inc.

Address: P.O. Box 284, Lincoln, MA  
01773

Contact: W. Bruce Hunter  
Phone: (617) 259-0800

(32) *Laboratory:* Hygeia, Inc.

Address: 303 Bear Hill Rd., Waltham,  
MA 02154

Contact: John R. Pilling  
Phone: (617) 847-9475

(33) *Laboratory:* Hygenix, Inc.

Address: 40 Hoyt St., Stamford, CT  
06905

Contact: Robert C. Brown  
Phone: (203) 324-2222

(34) *Laboratory:* Hygienetics  
Analytical Services, Inc.

Address: 150 Causeway St., Boston, MA  
02114

Contact: Jack Yee, Sr.  
Phone: (617) 723-4664

(35) *Laboratory:* Industrial Hygiene/  
New England.

Address: P.O. Box 947, Kennebunk, ME  
04043

Contact: Thomas F. Hatch  
Phone: (207) 985-6110

(36) *Laboratory:* Kaselaan & D'Angelo  
Asso., Inc.

Address: 500 Victory Rd., Marina Bay  
N., Quincy, MA 02171

Contact: Louis P. Solebello, Jr.  
Phone: (617) 523-2211

(37) *Laboratory:* Liberty Mutual  
Insurance Co. Analytical Laboratory.

Address: 71 Frankland Rd., Hopkinton,  
MA 01748

Contact: Kenneth J. Muzal  
Phone: (617) 435-9061

(38) *Laboratory:* MICROTHERM

Address: P.O. Box 7, Waltham, MA 02254

Contact: Arthur M. Coates  
Phone: (617) 891-1113

(39) *Laboratory:* MMR, Inc.

Address: P.O. Box 810, 241 West  
Boylston St., West Boylston, MA  
01583

Contact: Donald Pellegrino  
Phone: (617) 835-6262

(40) *Laboratory:* Massachusetts  
Institute of Technology Industrial  
Hygiene Office.

Address: 77 Massachusetts Ave., Rm.  
20C-204, Cambridge, MA 02139

Contact: Bonnie L. Weeks  
Phone: (617) 253-2596

(41) *Laboratory:* Mystic Air Quality  
Consultants, Inc.

Address: 1085 Buddington Rd., Groton,  
CT 06340

Contact: Christopher J. Eident  
Phone: (203) 449-8903

(42) *Laboratory:* New England Testing  
Lab., Inc.

Address: 1254 Douglas Ave., North  
Providence, RI 02904-5392

Contact: Robert T. Legere  
Phone: (401) 353-3420

(43) *Laboratory:* Northeast  
Environmental Testing Lab., Inc.

Address: 51 Sockanossett Crossroads,  
Cranston, RI 02910

Contact: Carmine J. Spinella  
Phone: (401) 785-1720

(44) *Laboratory:* Northeast Research  
Institute, Inc.

Address: 309 Farmington Ave., Suite A-  
100, Farmington, CT 06032

Contact: Linda Hensen  
Phone: (203) 677-9666

(45) *Laboratory:* Northeast Test  
Consultants.

Address: 587 Spring St., Westbrook, ME  
04092

Contact: Stephen Broadhead  
Phone: (207) 854-3939

(46) *Laboratory:* R.I. Analytical  
Laboratories, Inc.

Address: 231 Elm St., Warwick, RI 02888

Contact: Anthony E. Perrotti  
Phone: (401) 467-2452

(47) *Laboratory:* Shelburne  
Laboratories, Inc.

Address: P.O. Box 458, Shelburne, VT  
05482

Contact: Robert J. Emerson  
Phone: (802) 985-3379

(48) *Laboratory:* TRC Environmental  
Consultants, Inc.

Address: 800 Connecticut Blvd., East  
Hartford, CT 06108

Contact: Paul Hunt  
Phone: (203) 289-8631

(49) *Laboratory:* The Hartford  
Insurance Group Environmental  
Sciences Lab.

Address: Hartford Plaza, Hartford, CT  
06115

Contact: Stephan W. Campbell  
Phone: (203) 547-4557

(50) *Laboratory:* The Hartford Steam  
Boiler I & I Co. Environmental Services  
Laboratory.

Address: One State St., Hartford, CT  
06102

Contact: Floyd B. Parsons, Jr.  
Phone: (203) 722-5476

(51) *Laboratory:* The Water Works  
Laboratories.

Address: 60 Elmhill Ave., Leominster,  
MA 01453

Contact: Eric J. Koslowski  
Phone: (617) 534-1444

(52) *Laboratory:* Travelers Insurance-  
Engr. Lab.

Address: 248 Constitution Plaza,  
Hartford, CT 06183

Contact: Amita Sanghvi  
Phone: (203) 277-7533



## Region II—Edison, NJ

*Regional Asbestos Coordinator:*  
Arnold Freiburger, EPA, Region II,  
Woodbridge Ave., Raritan Depot, Bldg.  
10, (ES-PTS), Edison, NJ 08837. (201)  
321-6668, (FTS) 340-6671.

(1) *Laboratory:* AMA of New Jersey/  
New Jersey, Inc.

Address: Suite 307, 1090 King George's  
Post Rd., Edison, NJ 08837-3728

Contact: Robert M. Powell  
Phone: (201) 417-0660

(2) *Laboratory:* ASTECO, Inc.

Address: P.O. Box 2204, Niagara  
University, NY 14109

Contact: Fred Smith  
Phone: (716) 297-5992

(3) *Laboratory:* ATC Environmental,  
Inc.

Address: 104 East 25th St., New York,  
NY 10010

Contact: Robert Adamson  
Phone: (212) 353-8280

(4) *Laboratory:* Adelaide  
Environmental Health Associates.

Address: 117 East Pond Rd., Suite 200,  
White Plains, NY 10601

Contact: Ernest Coon  
Phone: (914) 949-3109

(5) *Laboratory:* Adelaide  
Environmental Health Associates.

Address: 61 Front St., Binghamton, NY  
13905-4705

Contact: Brian Donnelly/Steve  
Karpinski

Phone: (607) 722-6839

(6) *Laboratory:* Alpha Environmental,  
Inc.

Address: 27 Gerritsen Ave., Bayport, NY  
11705

Contact: Scott B. Mosher  
Phone: (516) 472-3499

(7) *Laboratory:* Alternative Ways, Inc.

Address: P.O. Box 1147, 100 Essex Rd.,  
Bellmawr, NJ 08031

Contact: John Luxford  
Phone: (609) 933-3300

(8) *Laboratory:* Ambient Labs, Inc.

Address: 85 Chambers St., New York,  
NY 10007

Contact: William A. Esposito  
Phone: (212) 962-4242

(9) *Laboratory:* Analytical Electron  
Microscopy, Inc.

Address: P.O. Box 1147, 100 Essex Rd.,  
Bellmawr, NJ 08031

Contact: Perry Cohn  
Phone: (609) 933-1663

(10) *Laboratory:* Applied  
Environmental Technology, Inc.

Address: 218 Cooper Center,  
Pennsauken, NJ 08109

Contact: Willard Kingsley  
Phone: (609) 488-9200

(11) *Laboratory:* Applied Geo  
Services, Inc.

Address: 300 Park Ave., S., 15th Fl., New  
York, NY 10010

Contact: Jeffrey A. Forgang  
Phone: (201) 750-4514

(12) *Laboratory:* Applied Respiratory  
Technology.

Address: P.O. Box 1132, Peekskill, NY  
10566

Contact: Paul M. Madigan  
Phone: (914) 431-6421

(13) *Laboratory:* Asbesto-Tech.

Address: 140-30 Elgar Pl., Suite 30-B,  
Bronx, NY 10475

Contact: Solomon Mate  
Phone: (212) 671-5266

(14) *Laboratory:* Asbestos Analysis of  
Central New York.

Address: 211 Dorothy St., Syracuse, NY  
13203

Contact: Mark Franey  
Phone: (315) 479-8793

(15) *Laboratory:* Asbestos  
Consultancy Service, Inc., Holiday Bldg.

Address: 121 State Highway 36, West  
Long Branch, NJ 07764

Contact: George Forrest  
Phone: (201) 571-1400

(16) *Laboratory:* Assessment  
Technologies, Inc.

Address: 323 West 39th St., New York,  
NY 10018

Contact: Richard W. Holmes  
Phone: (201) 391-1495

(17) *Laboratory:* Astech, Inc.

Address: 317 West Milton Ave.,  
Rahway, NJ 07065

Contact: Michael Matarazzo CIH  
Phone: (201) 398-4455

(18) *Laboratory:* Atlantic  
Environmental, Inc.

Address: 2 East Blackwell St., Suite 24,  
Dover, NJ 07801

Contact: Robert Sheriff  
Phone: (201) 366-4660

(19) *Laboratory:* Barnes and Jarnis/  
Hygeia Joint Office.

Address: 116 East 27th St., 5th Fl., New  
York, NY 10016

Contact: Carlett Grey-Golding  
Phone: (212) 532-6433

(20) *Laboratory:* Brad Associates.

Address: 1 Rosanne Ct., Lake  
Ronkonkoma, NY 11779

Contact: Benito P. San Pedro  
Phone: (516) 467-4539

(21) *Laboratory:* Buck Engineering &  
Environmental Laboratory.

Address: 100 Tompkins St., Courtland,  
NY 13045

Contact: John H. Buck  
Phone: (607) 753-3403

(22) *Laboratory:* Buffalo Testing Labs.,  
Inc.

Address: 902 Kenmore Ave., Buffalo, NY  
14216

Contact: Edward J. Kris  
Phone: (716) 873-2302

(23) *Laboratory:* Bulava  
Environmental, Inc.

Address: 13 Hunt Club Rd., Belle Mead,  
NJ 08502

Contact: Edward J. Bulava  
Phone: (201) 874-6207

(24) *Laboratory:* C & F Underwriters  
Group Occupational Health Services.

Address: 211 Mt. Airy Rd., Basking  
Ridge, NJ 07920

Contact: W. P. Osen  
Phone: (201) 953-3000

(25) *Laboratory:* CS Environmental  
Laboratory, Inc.

Address: 5854 Butternut Dr., East  
Syracuse, NY 13057

Contact: Ida J. Bennett  
Phone: (315) 448-8795

(26) *Laboratory:* Calibrations.

Address: P.O. Box 11266, Albany, NY  
12211

Contact: Sascha Percent  
Phone: (518) 786-1865

(27) *Laboratory:* Call the Experts.

Address: 820 Coney Island Ave.,  
Brooklyn, NY 11218

Contact: Robert Traktman  
Phone: (718) 941-7600

(28) *Laboratory:* Carmel Industrial  
Health, Inc.

Address: 12 Hoffman St., Maplewood,  
NJ 07040

Contact: Matthew Carmel  
Phone: (201) 378-8011

(29) *Laboratory:* Certified Engineering  
& Testing Company of Upstate New  
York, Inc.

Address: 284 Genesee St., Utica, NY  
13502

Contact: Mark S. Evans  
Phone: (315) 732-3826

(30) *Laboratory:* Charles M. Shapiro  
and Sons, P.C. Consulting Engineers.

Address: 6315 Mill Ln., Brooklyn, NY  
11234

Contact: Elliot J. Shapiro  
Phone: (718) 531-8400

(31) *Laboratory:* Chemical Samples &  
Analytical Services Company.

Address: P.O. Box 514, Thorofare, NJ  
08086

Contact: Donovan Chambers  
Phone: (609) 848-7227

(32) *Laboratory:* Chenango  
Environmental Laboratory, Inc.

Address: 349 Chenango St., Binghamton,  
NY 13901

Contact: John D. Meade  
Phone: (607) 723-7968



- (33) *Laboratory*: Clayton Environmental Consultants, Inc.  
Address: 160 Fieldcrest Ave., Raritan Center, Edison, NJ 08837  
Contact: Kirit H. Vora  
Phone: (201) 225-6040
- (34) *Laboratory*: Consulting Engineer.  
Address: P.O. Box 102, Bronx, NY 10471  
Contact: George Kan  
Phone: (212) 796-4761
- (35) *Laboratory*: Corning Eng. Environmental Services Corning Glass Works.  
Address: One Malcolm Ave., Teterboro, NJ 07608  
Contact: John C. Walton  
Phone: (201) 393-5647
- (36) *Laboratory*: Dames & Moore.  
Address: 12 Commerce Dr., Cranford, NJ 07016-1101  
Contact: Jim Conway  
Phone: (201) 272-8300
- (37) *Laboratory*: Detail Associates, Inc.  
Address: 601 Piermont Rd., Demarest, NJ 07627  
Contact: Stephen A. Jaraczewski  
Phone: (201) 786-7059
- (38) *Laboratory*: Doerffel Associates.  
Address: 1011 Highland Ave., Cinnaminson, NJ 08077  
Contact: Gene W. Doerffel  
Phone: (609) 829-7362
- (39) *Laboratory*: Dunn Geoscience Corp.  
Address: 12 Metro Park Rd., Albany, NY 12205  
Contact: James R. Dunn  
Phone: (518) 458-1313
- (40) *Laboratory*: ENTEK Environmental & Tech. Services Rennselaer Technology Park.  
Address: 125 DeFreest Dr., Troy, NY 12180  
Contact: Arthur N. Rohl  
Phone: (518) 283-9200
- (41) *Laboratory*: Eastern Analytical Services, Inc.  
Address: 7 Ringler Dr., East Northport, NY 11731  
Contact: Paul Stascavage  
Phone: (516) 368-3867
- (42) *Laboratory*: Eastern Analytical Services, Inc.  
Address: 225 Westchester Ave., Port Chester, NY 10573  
Contact: Christopher Corrado  
Phone: (914) 939-6992
- (43) *Laboratory*: Ecology & Environment, Inc.  
Address: 4285 Genesee St., Buffalo, NY 14225  
Contact: Gary Hahn  
Phone: (716) 631-0360
- (44) *Laboratory*: Electron-Microscopy Service Laboratories, Inc.  
Address: 108 Haddon Ave., Westmont, NJ 08108  
Contact: Peter Frasca  
Phone: (609) 858-4800
- (45) *Laboratory*: Enviro-Probe, Inc.  
Address: 17 Heritage Dr., Edison, NJ 08820  
Contact: Ved P. Kukreja  
Phone: (201) 769-0274
- (46) *Laboratory*: Enviro-Probe, Inc.  
Address: 2917 Bruckner Blvd., Bronx, NY 10461  
Contact: Ved P. Kukreja  
Phone: (212) 863-0045
- (47) *Laboratory*: Environmental Concerns Labs.  
Address: Box 78, High Bridge, NJ 08829  
Contact: Rita I. Buchanan  
Phone: (201) 638-5338
- (48) *Laboratory*: Environmental Health Protection Consultants, Inc.  
Address: 46 Ivy Ln., Cherry Hill, NJ 08002  
Contact: Joseph E. Wilson  
Phone: (609) 779-1372
- (49) *Laboratory*: Environmental Management Systems, Inc.  
Address: 14 Sarafian Rd., New Paltz, NY 12561  
Contact: Martin S. Rutstein  
Phone: (914) 255-1034
- (50) *Laboratory*: Environmental Monitoring and Consulting Services.  
Address: P.O. Box 872, Somerville, NJ 08876  
Contact: Joel Russell  
Phone: (201) 249-3005
- (51) *Laboratory*: Exxon Biomedical Sciences, Inc. IH Analytical Laboratory.  
Address: Mettlers Road: CN2350, East Millstone, NJ 08875-2350  
Contact: John E. Stillman  
Phone: (201) 873-6033
- (52) *Laboratory*: Friends Laboratory, Inc.  
Address: 446 Broad St., Waverly, NY 14892-1445  
Contact: Douglas Friend  
Phone: (607) 565-2893
- (53) *Laboratory*: Galson Technical Services.  
Address: 6601 Kirkville Rd., East Syracuse, NY 13057  
Contact: Eva Galson  
Phone: (315) 432-0506
- (54) *Laboratory*: Glomar Corp.  
Address: 29-09 Queens Plaza N., Long Island City, NY 11101  
Contact: Richard J. Deliberto  
Phone: (718) 786-6660
- (55) *Laboratory*: Hall-Kimbrell Environmental Services.  
Address: 129-09 26 Ave., Flushing, NY 11354-1166  
Contact: John F. Cesario  
Phone: (718) 445-9090
- (56) *Laboratory*: Hillman Environmental Co.  
Address: 427 Chestnut St., Union, NJ 07083  
Contact: Joseph P. Hillman  
Phone: (201) 686-3335
- (57) *Laboratory*: Independent Asbestos Labs, Inc.  
Address: 5900 Butternut Dr., East Syracuse, NY 13057  
Contact: Fred Terracina  
Phone: (315) 437-1122
- (58) *Laboratory*: Independent Testing & Consultation, Inc.  
Address: P.O. Box 539, Holmdel, NJ 07733  
Contact: Anthony Matthews  
Phone: (201) 583-2538
- (59) *Laboratory*: Independent Testing Laboratory.  
Address: 129-11 18th Ave., College Point, NY 11356  
Contact: Anthony Guleota  
Phone: (718) 961-8530
- (60) *Laboratory*: Industrial Testing Laboratories.  
Address: 50 Madison Ave., New York, NY 10010  
Contact: Kenneth J. Kohlhof  
Phone: (212) 685-8788
- (61) *Laboratory*: Inter-City Testing & Consulting Corp.  
Address: 167 Willis Ave., Mineola, NY 11501  
Contact: Malcolm Newman  
Phone: (516) 747-8400
- (62) *Laboratory*: International Asbestos Testing Laboratories (IATL).  
Address: 36 North Pine Ave., Maple Shade, NJ 08052  
Contact: Emil M. Ondra  
Phone: (609) 779-7792
- (63) *Laboratory*: Jesse H. Bidanset and Associates.  
Address: 167 Willis Ave., Mineola, NY 11501  
Contact: Jesse H. Bidanset  
Phone: (516) 747-8400
- (64) *Laboratory*: Kaselaan and D'Angelo Associates, Inc.  
Address: P.O. Box 165, Haddonfield, NJ 08033  
Contact: James J. Weitzman  
Phone: (609) 547-6500
- (65) *Laboratory*: Kemron Environmental Services.  
Address: 755 New York Ave., Huntington, NY 11743  
Contact: Joseph Mannetta  
Phone: (516) 427-0950



(66) *Laboratory*: Laboratories for Environmental Testing.

Address: P.O. Box 8381, Long Island City, NY 11101

Contact: Michael A. Martucci  
Phone: (718) 786-5583

(67) *Laboratory*: Laboratory Testing Services, Inc.

Address: 75 Urban Ave., Westbury, NY 11590

Contact: Kevin Tumulty  
Phone: (516) 334-7770

(68) *Laboratory*: Lozier Laboratories.

Address: 23 North Main St., Fairport, NY 14450

Contact: Alan J. Laffin  
Phone: (716) 223-7610

(69) *Laboratory*: Marine Chemists, Inc.

Address: P.O. Box 2089, Perth Amboy, NJ 08862-2089

Contact: James Wadatz  
Phone: (201) 826-3233

(70) *Laboratory*: Material Analysis.

Address: 54 Sylvania Ave., Cardiff, NJ 08232

Contact: Brian James  
Phone: (609) 646-8643

(71) *Laboratory*: Micro Investigations.

Address: 1102 Western Ave., #5, Albany, NY 12203

Contact: Cathryn L. Oakes  
Phone: (518) 489-6524

(72) *Laboratory*: Microscopy Research Laboratories, Inc.

Address: 1167 Highway 28, P.O. Box 5115, North Branch, NJ 08876

Contact: Edwin R. Levin  
Phone: (201) 526-9192

(73) *Laboratory*: National Testing Laboratories, Inc.

Address: 27-14 39th Ave., Long Island City, NY 11101

Contact: Allen Ross  
Phone: (718) 784-2626

(74) *Laboratory*: Northeastern Analytical Corp.

Address: Evesham Corporation Center, 4 East Stow Rd., Unit 10, Marlton, NJ 08053

Contact: William Harris  
Phone: (609) 651-1441

(75) *Laboratory*: O'Brien and Gere Engineers, Inc.

Address: Box 4873, 1304 Buckley Rd., Syracuse, NY 13221

Contact: Swiatoslav W. Kaczmar  
Phone: (315) 451-4700

(76) *Laboratory*: PMK Eng. and Testing, Inc.

Address: 516 Bloy St., Hillside, NJ 07205

Contact: James Ferris  
Phone: (201) 688-0044

(77) *Laboratory*: PSE & G Research Corporation.

Address: 200 Boyden Ave., Maplewood, NJ 07040

Contact: Douglas Campbell  
Phone: (201) 761-1390

(78) *Laboratory*: Pedneault Associates, Inc.

Address: 1615 Ninth Ave., Bohemia, NY 11716

Contact: John Pedneault  
Phone: (516) 467-8477

(79) *Laboratory*: Phoenix Safety Associates, Ltd.

Address: 37-41 30th St., Long Island City, NY 11101

Contact: F. Michael Finnerty  
Phone: (718) 786-5522

(80) *Laboratory*: Powel Environmental Services, Inc.

Address: Suite 9A, Camp Meeting Grounds, Delanco, NJ 08075

Contact: Michael D. Moschella  
Phone: (609) 764-8886

(81) *Laboratory*: Princeton Testing Laboratory.

Address: P.O. Box 3108, Princeton, NJ 08540

Contact: David Kichula  
Phone: (609) 452-9050

(82) *Laboratory*: Professional Service Ind., Inc.

Address: 423A New Karner Rd., Albany, NY 12205

Contact: Mark Wysin  
Phone: (518) 452-0777

(83) *Laboratory*: Professional Testing Labs, Inc. Regulatory Agency Consultant.

Address: 18 Seaview Blvd., Port Washington, NY 11050-4610

Contact: Mark Levinn  
Phone: (516) 484-7878

(84) *Laboratory*: Public Service Testing Laboratories, Inc.

Address: 37-31 57th St., Woodside, NY 11377

Contact: Stephen DiMartino  
Phone: (718) 476-9202

(85) *Laboratory*: Shimel and Sor Testing Labs.

Address: 98 Sand Park Rd., Cedar Grove, NJ 07009

Contact: Kamil Sor  
Phone: (201) 239-6001

(86) *Laboratory*: TAKA Asbestos Analytical Services.

Address: P.O. Box 208, Greenlawn, NY 11740

Contact: Thomas A. Kubic  
Phone: (516) 261-2117

(87) *Laboratory*: Testwell Craig Lab, Inc.

Address: 47 Hudson St., Ossining, NY 10562

Contact: Marco J. Pedone  
Phone: (914) 762-9000

(88) *Laboratory*: Testwell Craig Laboratories of Albany, Inc.

Address: 518 Clinton Ave., Albany, NY 12206

Contact: Stanley P. Purzycki  
Phone: (518) 436-4114

(89) *Laboratory*: Testwell Craig Laboratories, Inc.

Address: 50 Passaic Ave., Fairfield, NJ 07006

Contact: Marco J. Pedone  
Phone: (201) 882-8377

(90) *Laboratory*: Testwell-Craig Testing Laboratories.

Address: 565 East Harding Highway, Mays Landing, NJ 08330

Contact: Joseph Gigliotti  
Phone: (609) 625-1700

(91) *Laboratory*: U.S. Testing Company, Inc., Environmental Sciences Division.

Address: 1415 Park Ave., Hoboken, NJ 07030

Contact: Ellen McCabe Noyes  
Phone: (201) 792-2400

(92) *Laboratory*: United States Testing, Inc., Textiles Services Division.

Address: 1415 Park Ave., Hoboken, NJ 07030

Contact: Ray Robinson  
Phone: (201) 792-2400

(93) *Laboratory*: Xerox Analytical Laboratories.

Address: Xerox Corporation 0114-42D, Joseph C. Wilson Center of

Technology, Rochester, NY 14644

Contact: Judy A. Coene

Phone: (716) 422-3675

Region III—Philadelphia, PA

*Regional Asbestos Coordinator:* Staphanie Branche, EPA, Region III

(3HW-40), 841 Chestnut Bldg., Philadelphia, PA 19107. (215) 597-9859, (FTS) 597-9859.

(1) *Laboratory*: A.F. Meyer and Associates, Inc.

Address: 6845 Elm St., Suite 700, McLean, VA 22101

Contact: Jorge Rangel, Jr.  
Phone: (703) 734-9093

(2) *Laboratory*: AGX, Inc.

Address: Freedom Professional Bldg., Suite 3B, 1341 Old Freedom Rd., Mars, PA 16046

Contact: Kimberly Allison  
Phone: (412) 776-1905

(3) *Laboratory*: AMA Analytical Services.

Address: 4475 Forbes Blvd., Lanham, MD 20706

Contact: Bruce Lippy  
Phone: (301) 459-2640

(4) *Laboratory*: ASBESTECH Division.



Address: P.O. Box 98, Dunbar, WV 25064  
Contact: John Richard Hart  
Phone: (304) 766-6224

(5) *Laboratory*: ATEC Associates of Virginia, Inc.

Address: 2551 Eltham Ave., Suite "Z",  
Norfolk, VA 23513

Contact: Richard A. Vogel, Jr.  
Phone: (804) 857-6765

(6) *Laboratory*: ATEC Associates, Inc.,  
Industrial Hygiene Division.

Address: 8989 Herrmann Dr., Columbia,  
MD 21045-8780

Contact: Paul A. Esposito  
Phone: (301) 381-0232

(7) *Laboratory*: Academy of IRM, Inc.

Address: 1600 Winchester Rd.,  
Annapolis, MD 21401

Contact: Bobby E. Leonard  
Phone: (301) 757-6503

(8) *Laboratory*: Accredited  
Environmental Technologies  
Incorporated.

Address: 28 North Pennell Rd., Lima, PA  
19037

Contact: Jack Carney  
Phone: (215) 891-0114

(9) *Laboratory*: Advanced Analytical  
Laboratories, Inc.

Address: RD-1 Rt 309, P.O. Box E,  
Drums, PA 18222

Contact: Thomas Martinelli  
Phone: (717) 788-5110

(10) *Laboratory*: Air Quality Analysis  
Associates.

Address: 1337 Perry Ave., Morgantown,  
WV 26505

Contact: John T. Jankovic  
Phone: (304) 599-0023

(11) *Laboratory*: Air Quality Services.

Address: 4527 Clairton Blvd., Pittsburgh,  
PA 15236

Contact: Nancy Kotsko  
Phone: (412) 881-5630

(12) *Laboratory*: Allegheny Mountain  
Research, Occupational Health Division.

Address: RD 1, Box 243A, Berlin, PA  
15530-9546

Contact: Victor Kawchak  
Phone: (814) 267-4404

(13) *Laboratory*: Altest Environmental  
Labs.

Address: 28 West Main St., Plymouth,  
PA 18651

Contact: Frank Egenski  
Phone: (717) 779-5377

(14) *Laboratory*: Ambric Testing, Inc.

Address: 3600 Crawford St.,  
Philadelphia, PA 19129

Contact: Walter M. Stein  
Phone: (215) 438-7944

(15) *Laboratory*: American Medical  
Laboratories, Inc.

Address: 2000 Breomo Rd., Suite 204,  
Richmond, VA 23226

Contact: Robert Murphy  
Phone: (703) 691-9100

(16) *Laboratory*: Analytics.

Address: P.O. Box 25249, Richmond, VA  
23260

Contact: James Calpin  
Phone: (804) 353-8973

(17) *Laboratory*: Analytics Laboratory,  
Inc., Subs. of Roche Biomedical  
Laboratories Inc.

Address: 2843 Duke St., Alexandria, VA  
22314

Contact: Eugene Buie  
Phone: (703) 370-7900

(18) *Laboratory*: Analytics Laboratory,  
Inc., Subs. of Roche Biomedical  
Laboratories Inc.

Address: 1003 Norfolk Square, Norfolk,  
VA 23502

Contact: Christie Buie  
Phone: (804) 857-0675

(19) *Laboratory*: Apex Environmental,  
Inc.

Address: 7930 Old Georgetown Rd.,  
Bethesda, MD 20814

Contact: Frank G. Fitzpatrick  
Phone: (301) 657-2739

(20) *Laboratory*: Applied  
Environmental Health & Safety Inc.

Address: Reston International Center,  
11800 Sunrise Valley Dr., Suite 1230,  
Reston, VA 22091

Contact: Jana Ambrose  
Phone: (703) 648-0822

(21) *Laboratory*: Asbestos Testing  
Inc., Industrial Hygienist.

Address: 5207 Noyes Ave., Charleston,  
WV 25304

Contact: John S. Ferrell  
Phone: (304) 925-6795

(22) *Laboratory*: BCM Lab Division.

Address: 1850 Gravers Rd., Norristown,  
PA 19401

Contact: John J. Tobin  
Phone: (215) 275-1190

(23) *Laboratory*: Batta Environmental  
Associates.

Address: P.O. Box 9722, Newark, DE  
19711-9722

Contact: Steve Cahill  
Phone: (302) 737-3376

(24) *Laboratory*: Biospherics, Inc.

Address: 12051 Indian Creek Ct.,  
Beltsville, MD 20705

Contact: Len Burelli  
Phone: (301) 369-3900

(25) *Laboratory*: Briggs Associates,  
Inc.

Address: 8300 Guilford Rd., Suite E,  
Columbia, MD 21046

Contact: J. Ross Voorhees  
Phone: (301) 621-8730

(26) *Laboratory*: Brujos Scientific, Inc.

Address: 505 Drury Ln., Baltimore, MD  
21229

Contact: Robert Olcerst  
Phone: (301) 566-0859

(27) *Laboratory*: C & B Laboratories.

Address: 420 Ellwell Ct., Glen Burnie,  
MD 21061

Contact: G. Edward Carney  
Phone: (301) 760-6111

(28) *Laboratory*: Camtech, Inc.

Address: McKnight-Ivory Bldg., Suite  
#202, 4550 McKnight Rd., Pittsburgh,  
PA 15237

Contact: Michael A. Campbell  
Phone: (412) 931-1210

(29) *Laboratory*: Cohen.

Address: 215 Oak Ave., Baltimore, MD  
21208

Contact: Frances H. Cohen  
Phone: (301) 484-6391

(30) *Laboratory*: Commonwealth  
Laboratory, Inc.

Address: Chemists Bldg., P.O. Box 8025,  
Richmond, VA 23223

Contact: Edwin Cox, III  
Phone: (804) 648-8358

(31) *Laboratory*: Criterion  
Laboratories, Inc.

Address: 1035 Mill Creek Dr., Suite A2,  
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Contact: James A. Weltz  
Phone: (215) 322-2776

(32) *Laboratory*: Cumberland  
Analytical Labs., Inc.

Address: 56 North Second St.,  
Chambersburg, PA 17201

Contact: D.R. Richner, Jr.  
Phone: (717) 263-5943

(33) *Laboratory*: Eagle Industrial  
Hygiene Association Incorporated.

Address: 10220 Selmer Place,  
Philadelphia, PA 19116

Contact: Keith Crawford  
Phone: (215) 677-9736

(34) *Laboratory*: Enviro Dynamics,  
Inc., Occupational & Environmental  
Health Consultants.

Address: 3800 Fairfax Dr., Suite 8,  
Arlington, VA 22203

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Phone: (703) 522-2622

(35) *Laboratory*: Environmental  
Laboratories, Inc.

Address: 103 South Leadbetter Rd.,  
Ashland, VA 23005

Contact: Terry W. Hall  
Phone: (804) 798-1589

(36) *Laboratory*: Environmental  
Management Group, Inc.

Address: 9841 Broden Land Pkwy., Suite  
117, Columbia, MD 21046

Contact: Patrick Thomas Connor  
Phone: (301) 290-7078

(37) *Laboratory*: FREE-COL  
Laboratories.



Address: P.O. Box 557, Cotton Rd.,  
Meadville, PA 16335-0557  
Contact: J. Richard Wohler  
Phone: (814) 724-6242

(38) *Laboratory:* GSP Environmental  
Sampling, Inc.

Address: 55th and A.V.R.R., Pittsburgh,  
PA 15201

Contact: Georgene Perry  
Phone: (412) 782-4488

(39) *Laboratory:* Galson Technical  
Services, Inc.

Address: Suite 200, 5170 Campus Dr.,  
Plymouth Meeting, PA 19462

Contact: Pamela Weaver  
Phone: (215) 834-7288

(40) *Laboratory:* Gannett Fleming  
Environmental Laboratory.

Address: 209 Senate Ave., Camp Hill,  
PA 17011

Contact: David W. Lane  
Phone: (717) 763-7211

(41) *Laboratory:* Geo-Environmental  
Services, Inc., Maryland Division.

Address: 444 North Frederick Ave., Suite  
L148, Gaithersburg, MD 20877-2432

Contact: John T. Razzolini  
Phone: (301) 353-0338

(42) *Laboratory:* Geological  
Consulting Services, Inc.

Address: Industrial Park, P.O. Box 848,  
Bluefield, VA 24605-0848

Contact: Graham H. Simmerman  
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(43) *Laboratory:* Havens Laboratories,  
Inc.

Address: 1130 East Market St.,  
Charlottesville, VA 22901

Contact: Michael Lockhart  
Phone: (804) 293-6000

(44) *Laboratory:* Industrial Health  
Foundation, Inc.

Address: 34 Penn Circle W., Pittsburgh,  
PA 15206

Contact: David R. Fussaro  
Phone: (412) 363-6800

(45) *Laboratory:* Industrial Hygiene &  
Occup. Med Lab, A Division of  
American Medical Lab. Inc.

Address: 11091 Main St., Fairfax, VA  
22030

Contact: Jan Turner/Fred Grunder  
Phone: (703) 691-9100

(46) *Laboratory:* Interocean Marine  
Inspection.

Address: 639-16th Ave., Prospect Park,  
PA 19076

Contact: Thomas F. Gibson  
Phone: (215) 237-6548

(47) *Laboratory:* Interscience  
Research.

Address: 2614 Wyoming Ave., Norfolk,  
VA 23513

Contact: Joseph H. Guth  
Phone: (804) 853-8813

(48) *Laboratory:* JACA Corporation.

Address: 550 Pinetown Rd., Fort  
Washington, PA 19034

Contact: Gary Lester  
Phone: (215) 643-5466

(49) *Laboratory:* Lancaster  
Laboratories, Inc.

Address: 2425 New Holland Ave.,  
Lancaster, PA 17601

Contact: Barbara J. Weaver  
Phone: (717) 656-2301

(50) *Laboratory:* Lehigh Valley  
Analytics, Inc.

Address: 60 West Broad St., Bethlehem,  
PA 18018

Contact: Barbara J. Davies  
Phone: (215) 866-4434

(51) *Laboratory:* M.J. Reider  
Associates, Inc.

Address: 107 Angelica St., Reading, PA  
19611

Contact: Barbara Reider Coyle  
Phone: (215) 374-5129

(52) *Laboratory:* MDS Laboratories.

Address: 4418 Pottsville Pike, Reading,  
PA 19605

Contact: Fred Usbeck  
Phone: (215) 921-9191

(53) *Laboratory:* Marine Chemist  
Service, Inc.

Address: 11850 Tug Boat Ln., Newport  
News, VA 23606

Contact: Colleen Becker  
Phone: (804) 873-0933

(54) *Laboratory:* Marine Inspections of  
Tidewater, Inc.

Address: 3081 Stratford Ct., Chesapeake,  
VA 23321

Contact: John G. Walker  
Phone: (804) 484-8760

(55) *Laboratory:* Maryland Analytical  
Lab.

Address: 3000 Chestnut St., Suite 324,  
Baltimore, MD 21211

Contact: Robert K. Simon  
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(56) *Laboratory:* Med-Tox Associates,  
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Contact: Tom Dagenhart  
Phone: (703) 368-7880

(57) *Laboratory:* Metropolitan  
Laboratories, Inc.

Address: P.O. Box 8921, Norfolk, VA  
23503

Contact: Anthony W. Smith  
Phone: (804) 583-9444

(58) *Laboratory:* Microbac, Inc., Erie  
Testing Laboratory Division.

Address: 2401 West 26th St., Erie, PA  
16506

Contact: Mark R. Banister  
Phone: (814) 833-4790

(59) *Laboratory:* Microlore, Inc.

Address: 2201A 22nd St., Nitro, WV  
25143

Contact: Jon C. Pauley  
Phone: (304) 755-7118

(60) *Laboratory:* Mountaineer Testing  
Labs, Inc.

Address: P.O. Box 767, 425 North  
Jefferson, Lewisburg, WV 24901

Contact: Rob Dillon  
Phone: (304) 645-7114

(61) *Laboratory:* Newport News  
Shipbuilding Industrial Hygiene.

Address: 4101 Washington Ave.,  
Newport News, VA 23607

Contact: David L. Baize  
Phone: (804) 380-2649

(62) *Laboratory:* Occupational  
Medical Center Lab.

Address: 490 L'Enfant Plaza E., SW.,  
Suite 4300, P.O. Box 23580,

Washington, DC 20026

Contact: Christopher Beza  
Phone: (202) 488-7990

(63) *Laboratory:* Oneil M. Banks, Inc.

Address: 336 South Main St., Bel Air,  
MD 21014

Contact: Michelle L. Evans  
Phone: (301) 879-4676

(64) *Laboratory:* Orion Inspection  
Service.

Address: 3002 Hungary Spring Rd., Suite  
203, Richmond, VA 23228

Contact: Dabney P. Hardy, III  
Phone: (804) 755-6038

(65) *Laboratory:* Paleozoic  
Hydrocarbon Industries.

Address: 132 Oakwood Rd., Charleston,  
WV 25314

Contact: S. M. Spencer, Jr.  
Phone: (304) 345-7756

(66) *Laboratory:* Paskal Environmental  
Services.

Address: 1400 South Joyce St., Suite C-  
1701, Arlington, VA 22202

Contact: Steven S. Paskal  
Phone: (703) 920-6653

(67) *Laboratory:* Peach Laboratories.

Address: P.O. Box 338, 5465 Route 8,  
Gibsonia, PA 15044

Contact: John M. Lang  
Phone: (412) 443-9244

(68) *Laboratory:* Penn Environmental  
Health.

Address: 301 South Lang Ave.,  
Pittsburgh, PA 15208

Contact: Abbas Labbauf  
Phone: (412) 241-5130

(69) *Laboratory:* Pennrun Corporation.

Address: 150 William Pitt Way,  
Pittsburgh, PA 15238

Contact: Valerie McDonald  
Phone: (412) 826-5304



(70) *Laboratory*: Professional Service Ind., Inc., PTL Division.

Address: 806 Barkwood Ct., Suite K, Linthicum, MD 21090  
Contact: Prad Perera  
Phone: (301) 789-3224

(71) *Laboratory*: Professional Service Ind., Inc., Pittsburgh Testing Lab Division.

Address: 850 Poplar St., Pittsburgh, PA 15220  
Contact: Glenn Goss  
Phone: (412) 922-4000

(72) *Laboratory*: RJ Lee Group.

Address: 350 Hochberg Rd., Monroeville, PA 15146  
Contact: William H. Powers  
Phone: (412) 325-1776

(73) *Laboratory*: SSI Environmental Consultants.

Address: 112 Kountz Rd., P.O. Box 159, Freeport, PA 16229  
Contact: Marianne C. Saulsbury  
Phone: (412) 295-2399

(74) *Laboratory*: STL, Inc.

Address: P.O. Box 1029, Aberdeen, MD 21001  
Contact: Camille J. Carraway  
Phone: (301) 575-7844

(75) *Laboratory*: Schneider Laboratories, Inc.

Address: 1427 West Main St., Richmond, VA 23220-4629  
Contact: Richard F. Schneider  
Phone: (804) 353-6778

(76) *Laboratory*: Spotts, Stevens, and McCoy.

Address: 345 North Wyomissing Blvd., Wyomissing, PA 19610  
Contact: Spencer R. Watts  
Phone: (215) 376-6581

(77) *Laboratory*: Stemicro Corporation.

Address: 15817 Crabbs Branch Way, Rockville, MD 20855  
Contact: Ann G. Wylie  
Phone: (301) 454-3548

(78) *Laboratory*: Stewart-Todd Associates, Inc.

Address: 1016 West Ninth Ave., P.O. Box 970, King of Prussia, PA 19406  
Contact: Jim Steigerwalt  
Phone: (215) 962-0166

(79) *Laboratory*: Structure Probe, Inc.

Address: 535 East Gay St., West Chester, PA 19380  
Contact: Kim Royer  
Phone: (215) 436-5400

(80) *Laboratory*: The Glaser Company.

Address: 200 Kanawha Ter., St. Albans, WV 25177  
Contact: Stephen Glaser  
Phone: (304) 722-2832

(81) *Laboratory*: Tracor Jitco, Inc., Asbestos Technology Center.

Address: 1601 Research Blvd., Rockville, MD 20850

Contact: Michael L. Edwards  
Phone: (301) 984-2722

(82) *Laboratory*: U.S. National Laboratories.

Address: P.O. Box 2267, Altoona, PA 16603  
Contact: Christopher Tate  
Phone: (814) 946-8778

(83) *Laboratory*: University of Delaware, College of Arts and Science, Department of Geology.

Address: 101 Penny Hall, Newark, DE 19716  
Contact: Peter B. Leavens  
Phone: (302) 451-2569

(84) *Laboratory*: V.J. Schuler Associates, Inc.

Address: 100 South Cass St., P.O. Box 138, Middletown, DE 19709  
Contact: Gary A. Hayes  
Phone: (302) 378-9881

(85) *Laboratory*: Versar, Inc.

Address: 6850 Versar Center, Springfield, VA 22151  
Contact: Robert Maxfield  
Phone: (703) 642-6755

(86) *Laboratory*: Vigor Associates, Inc.

Address: 7250 Frankford Ave., Philadelphia, PA 19135  
Contact: Paul Martin  
Phone: (215) 332-7460

(87) *Laboratory*: Virginia Health Resources.

Address: 6 Skiffs Creek Landing Rd., Newport News, VA 23603  
Contact: Edward D. Berg  
Phone: (804) 887-4946

(88) *Laboratory*: Volz: Environmental Services.

Address: 91 Pennsylvania Ave., Oakmont, PA 15139  
Contact: George J. Skarupa  
Phone: (412) 828-6666

(89) *Laboratory*: Washington Analytical Laboratory, Inc.

Address: 14214 Coda Pl., Chantilly, VA 22021  
Contact: R. Hugh Granger  
Phone: (703) 631-6868

(90) *Laboratory*: Wright Lab Services, Inc.

Address: 34 Dogwood Ln., Middletown, PA 17057  
Contact: Francine Walker  
Phone: (717) 944-5541

(91) *Laboratory*: Zeelander, Inc.

Address: P.O. Box 30382, Philadelphia, PA 19103  
Contact: Dirk K. Shelmire

(92) *Laboratory*: i-TEM, Ltd.

Address: North Lake Commerce Center, 12850 Middlebrook Rd., P.O. Box 1060, Germantown, MD 20874

Contact: Randall A. Kimsey  
Phone: (301) 353-0585

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(2) *Laboratory*: ATEC Associates, Inc.  
Address: 4845 Rosselle St., Jacksonville, FL 32205

Contact: Benton E. Laughlin  
Phone: (904) 387-6404

(3) *Laboratory*: ATEC Associates, Inc., Environmental Services Division.

Address: 1300 Williams Dr., Marietta, GA 30066-6299  
Contact: Dwayne Cheatam  
Phone: (404) 427-9456

(4) *Laboratory*: Advanced Industrial Hygiene Services, Inc.

Address: 2131 Southwest 2nd Ave., Miami, FL 33129  
Contact: Bruce Marchette  
Phone: (305) 854-7554

(5) *Laboratory*: American Microscopy Laboratory.

Address: 29 Heritage Hills, Tuscaloosa, AL 35406  
Contact: M.A. Beg  
Phone: (205) 345-2555

(6) *Laboratory*: Analytical Management, Inc.

Address: P.O. Box 11279, Lexington, KY 40574  
Contact: David H. McRae  
Phone: (606) 231-6511

(7) *Laboratory*: Applied Environmental Technology, Inc.

Address: P.O. Box 421, Marietta, GA 30061  
Contact: James B. Glass  
Phone: (404) 425-1115

(8) *Laboratory*: Applied Environmental Testing Lab, Inc.

Address: 680 Thornton Way, Suite 202, Lithia Springs, GA 30057  
Contact: Ali A. Hassani Pak  
Phone: (404) 948-4919

(9) *Laboratory*: Applied Technical Services.

Address: 1190 Atlanta Industrial Dr., Marietta, GA 30066  
Contact: Laurel V. Waters  
Phone: (404) 423-1400

(10) *Laboratory*: Asbestos Analysis and Information Service.

Address: P.O. Box 837, Fair Oaks, NC 27524



Contact: Stephen H. Westbrook  
Phone: (919) 894-7718

(11) *Laboratory*: Azimuth, Inc.  
Address: P.O. Box 71904, Charleston, SC  
29415-1904

Contact: Charles B. Stoye  
Phone: (803) 553-9456

(12) *Laboratory*: BCM Converse, Inc.  
Address: 103 St. Anthony St., P.O. Box  
1784, Mobile, AL 36633  
Contact: Michael Findley  
Phone: (205) 433-3981

(13) *Laboratory*: Bonner Analytical  
Testing Co.  
Address: Rt. 13, Box 85, Hattiesburg, MS  
39401

Contact: Michael Bonner  
Phone: (601) 264-2854

(14) *Laboratory*: Buetow Laboratories.  
Address: 6921 Waldorf Ct., Charlotte,  
NC 28211

Contact: David H. Buetow  
Phone: (704) 365-2146

(15) *Laboratory*: CRU, Inc.  
Address: P.O. Box 24467, Louisville, KY  
40224

Contact: Donna M. Ringo  
Phone: (502) 426-8860

(16) *Laboratory*: Carolina  
Environmental.

Address: P.O. Box 37549, Raleigh, NC  
27627

Contact: John D. Koenigs  
Phone: (919) 859-0477

(17) *Laboratory*: Cavin Analytical  
Consultants.

Address: P.O. Box 454, Snellville, GA  
30278

Contact: Donald K. Cavin  
Phone: (404) 979-8838

(18) *Laboratory*: Certified Engineering  
and Testing Co., Inc.

Address: 2600 Poplar Ave., Memphis, TN  
38112

Contact: Amy Ginsberg  
Phone: (901) 458-6860

(19) *Laboratory*: Chem-Ray.

Address: P.O. Box 821, Florence, AL  
35631

Contact: James D. Ray  
Phone: (205) 776-4345

(20) *Laboratory*: Chemalytics.

Address: 300 Doctors Bldg., 33 East  
Seventh St., Covington, KY 41011

Contact: Kenneth P. Reed  
Phone: (606) 431-6224

(21) *Laboratory*: Cigna Loss Control  
Services Environmental Health  
Laboratory.

Address: 1021 Georgia Ave., 3rd Fl.,  
Macon, GA 31201-6709

Contact: Harriotte A. Hurley  
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(22) *Laboratory*: Clarke.

Address: 1710 Mill St., Camden, SC  
29020

Contact: Michael T. Clarke  
Phone: (803) 432-0958

(23) *Laboratory*: Clayton  
Environmental Consultants, Inc.

Address: 2141 Kingston Ct., SE., Suite  
116, Marietta, GA 30067

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Phone: (404) 952-3064

(24) *Laboratory*: Davis and Floyd, Inc.  
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Contact: William J. Day  
Phone: (803) 229-5211

(25) *Laboratory*: Dunn Laboratories.

Address: 717 Edgehill Ave., NW.,  
Atlanta, GA 30318

Contact: Terry R. Bennekou  
Phone: (404) 873-6159

(26) *Laboratory*: EEC, Inc.

Address: 3006-F Industrial Dr., Raleigh,  
NC 27609

Contact: Mike Scrimanker  
Phone: (919) 833-2012

(27) *Laboratory*: EEC, Inc.

Address: P.O. Box 11847, Columbia, SC  
29211

Contact: Daniel A. Smith  
Phone: (803) 256-7846

(28) *Laboratory*: EG&G Engineering  
and Sciences Laboratories.

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32955

Contact: Harry L. Capadano, Jr.  
Phone: (407) 639-2200

(29) *Laboratory*: EMSL, Inc.

Address: 1800 Peachtree St., NW., Suite  
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Contact: John Scarano  
Phone: (609) 858-4800

(30) *Laboratory*: Eatech Laboratories,  
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Mobile, AL 36615

Contact: Laura C. Prine  
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(31) *Laboratory*: Ecosafe, Inc.

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Contact: Steven L. Goode  
Phone: (919) 493-2612

(32) *Laboratory*: Electro-Analytical,  
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(33) *Laboratory*: EnviroSciences, Inc.

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(35) *Laboratory*: Environmental  
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Phone: (205) 933-0400

(36) *Laboratory*: Environmental  
Protection Systems.

Address: 2525 Perimeter Place Dr., Suite  
125, Nashville, TN 37214

Contact: Ronald L. Allums  
Phone: (615) 885-9400

(37) *Laboratory*: Environmental  
Protection Systems, Inc.

Address: 7215 Pine Forest Rd.,  
Pensacola, FL 32506

Contact: James R. Burkhalter  
Phone: (904) 944-0301

(38) *Laboratory*: Environmental  
Protection Systems, Inc.

Address: P.O. Box 20382, Jackson, MS  
39209

Contact: Corbin McGriff  
Phone: (601) 922-8242

(39) *Laboratory*: Environmental  
Science and Engineering, Inc.

Address: P.O. Box 1703, Gainesville, FL  
32602-1703

Contact: John J. Mousa  
Phone: (904) 332-3318

(40) *Laboratory*: Environmental  
Testing, Inc.

Address: 1700 University Commercial  
Pl., Charlotte, NC 28213

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(41) *Laboratory*: Enviropact.

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(42) *Laboratory*: Enviropact Services,  
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FL 34620-4835

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(43) *Laboratory*: EnviroSciences, Inc.

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Contact: R.C. Jordan  
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(44) *Laboratory*: Evans Environmental  
and Geological Science and  
Management, Inc.

Address: P.O. Box 452900, Miami, FL  
33245-2900

Contact: Charles C. Evans  
Phone: (305) 856-7458



(45) *Laboratory*: F.L. Osborne and Associates, Inc.  
Address: 7053 Whitby Ave., Clemmons, NC 27012  
Contact: Fred L. Osborne  
Phone: (919) 766-0751

(46) *Laboratory*: Flowers Chemicals Laboratories.

Address: P.O. Box 597, Altamont Springs, FL 32701  
Contact: Jefferson S. Flowers  
Phone: (305) 339-5984

(47) *Laboratory*: Fox Run Laboratories.  
Address: 1440 Petros Rd., Woodburn, KY 42170

Contact: Douglas A. Price  
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(48) *Laboratory*: GSC Environmental Laboratories, Inc.

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Contact: William J. Horning  
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(49) *Laboratory*: Geo-Environmental Services, Inc.

Address: 141 West Wieuca Rd., Suite 200A, Atlanta, GA 30342  
Contact: Susan Harper  
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(50) *Laboratory*: Harmon Engineering Associates, Inc.

Address: 1550 Pumphrey Ave., Auburn, AL 36830-4399  
Contact: Roger Thompson  
Phone: (205) 821-9250

(51) *Laboratory*: Health & Hygiene, Inc.

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(52) *Laboratory*: JSG (John S. George) Consultants.

Address: Keene's Way, Box 119, Keene, KY 40339-0119  
Contact: John S. George  
Phone: (606) 885-5130

(53) *Laboratory*: KNL Laboratory Services.

Address: P.O. Box 1833, Tampa, FL 33601  
Contact: Garrett J. McGibbon  
Phone: (813) 229-2879

(54) *Laboratory*: Kenvirons, Inc.

Address: 452 Versailles Rd., P.O. Drawer V, Frankfort, KY 40602  
Contact: Gary H. Revlett  
Phone: (502) 695-4357

(55) *Laboratory*: Kilbourn Associates.  
Address: 1913 Capri Dr., Huntsville, AL 35811

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(56) *Laboratory*: Larron Laboratory.  
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Contact: Daniel Roth  
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(57) *Laboratory*: Laseter and Associates, Inc.

Address: P.O. Box 176, Collierville, TN 38107  
Contact: Kenneth Laseter  
Phone: (901) 853-0400

(58) *Laboratory*: Law Associates, Inc.  
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Contact: Greg Lewars  
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(59) *Laboratory*: Law Engineering.  
Address: 4919 West Laurel St., P.O. Box 24183, Tampa, FL 33623  
Contact: Susan K. Gossett  
Phone: (813) 879-0750

(60) *Laboratory*: Law Engineering Testing Co.

Address: 501 Minuet Ln., P.O. Box 11297, Charlotte, NC 28220  
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(61) *Laboratory*: Law Engineering, Inc.  
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Phone: (205) 252-9901

(62) *Laboratory*: Loss Control Inc.

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Contact: John F. Summersett  
Phone: (606) 273-8881

(63) *Laboratory*: MDN&T, Inc.

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(64) *Laboratory*: McCrone Environmental Services, Inc.

Address: 1412 Oadbrook Dr., Suite 100, Norcross, GA 30093  
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(65) *Laboratory*: Metro Services Laboratory Asbestos Control Division.

Address: 6309 Fern Valley Pass, Louisville, KY 40228  
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Phone: (502) 964-0865

(66) *Laboratory*: Micro-Methods.

Address: 5106 Telephone Rd., Pascagoula, MS 39567  
Contact: Thomas J. Wilson  
Phone: (601) 769-7774

(67) *Laboratory*: Montgomery Testing Co.

Address: P.O. Box 304, Montgomery, AL 36102  
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(68) *Laboratory*: Northrop Services, Inc.

Address: P.O. Box 12313, RTP, NC 27709-2313  
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(69) *Laboratory*: Office of Safety and Environmental Health.

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(70) *Laboratory*: Pace Laboratories, Inc.

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(71) *Laboratory*: Pacific Environmental Services, Inc.

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Contact: Gary Tencer  
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(72) *Laboratory*: Pensacola P.O.C., Inc.  
Address: 406 Greve Road, Pensacola, FL 32507

Contact: Barbara Sviglin  
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(73) *Laboratory*: Phoenix Environmental Labs, Division of P.D.R. Engineers, Inc.

Address: 2000 Lindell Ave., Nashville, TN 37203

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(74) *Laboratory*: Pioneer Laboratory, Inc.

Address: 11 East Olive Rd., Pensacola, FL 32514  
Contact: Peggy Gaskill  
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(75) *Laboratory*: Professional Contract Services, Inc.

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(76) *Laboratory*: Professional Service Ind., Inc.

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(77) *Laboratory*: Professional Service Ind., Inc., PTL/Arribas Division.

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(78) *Laboratory*: Professional Service Ind., Inc., Pittsburgh Testing Laboratory Div.

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(79) *Laboratory*: Quality Analytical Services.

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(80) *Laboratory*: R3 Enterprises.

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(81) *Laboratory*: Resolution, Inc.

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Contact: Ron Francis  
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(82) *Laboratory*: Roberts Environmental Services, MAKO Office Complex.

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(83) *Laboratory*: S&ME Industrial Tech., Inc.

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(86) *Laboratory*: Saftey Underwriters Lab., Inc.

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(87) *Laboratory*: Schweiger and Associates.

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(88) *Laboratory*: Southeastern Marine Chemists, Inc., Southeastern Chemists' Laboratories.

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(89) *Laboratory*: Southern Earth Sciences, Inc.

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(90) *Laboratory*: Southern Research Institute.

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(91) *Laboratory*: Specialized Assays.

Address: 210 12th Ave., S., P.O. Box 25110, Nashville, TN 37202

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(92) *Laboratory*: St. Elizabeth Medical Center

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(93) *Laboratory*: TEI Environmental, Inc.

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(94) *Laboratory*: TTL, Inc.

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(95) *Laboratory*: Tennessee Valley Authority

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(96) *Laboratory*: Testwell Craig Laboratories of Florida, Inc.

Address: 7104 Northwest 51st St., Miami, FL 33166

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(97) *Laboratory*: Testwell Craig Laboratories of Tampa, Inc.

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(98) *Laboratory*: Thompson Engineering Testing

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(101) *Laboratory*: Weston/ATC, Inc., Analytical Services

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(102) *Laboratory*: Wilson Analytical, Inc.

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(3) *Laboratory*: ATEC Associates, Inc.

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(5) *Laboratory*: Affiliated Environmental Services, Inc.

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(6) *Laboratory*: Air Quality Testing

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(7) *Laboratory*: AirTech Associates, Inc.

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(8) *Laboratory:* Aires Environmental Services.

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(12) *Laboratory:* American Analytical Laboratories.

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44308

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(13) *Laboratory:* Analytical Testing and Consulting Services, Inc.

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(14) *Laboratory:* Anasbestos Co.

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(15) *Laboratory:* Applied Environmental Sciences, Inc.

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(16) *Laboratory:* Asbestos Compliance Technology, Inc.

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45223

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(18) *Laboratory:* Asbestos Control Methods, Inc.

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Phone: (312) 398-0078

(19) *Laboratory:* Asbestos Management, Inc.

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(20) *Laboratory:* BCA Laboratory.

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(21) *Laboratory:* BDN Industrial Hygiene Consultants.

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(22) *Laboratory:* Badger Labs. & Eng.  
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(23) *Laboratory:* Beling Consultants, Inc.

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Contact: James S. Ferguson  
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(25) *Laboratory:* Bowser-Morner Testing Laboratories, Inc.

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Contact: Mark A. Bingman  
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(26) *Laboratory:* Braun Environmental Laboratories.

Address: 6800 South Country Rd. 18,  
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(27) *Laboratory:* Brookfield Academy,  
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(28) *Laboratory:* Bruce Menkel and Associates, Inc.

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(29) *Laboratory:* C.G. Technologies, Inc.

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(30) *Laboratory:* CAE Asbestos.

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(31) *Laboratory:* CENCON.

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(32) *Laboratory:* Carnow, Conibear and Associates, Ltd.

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(33) *Laboratory:* Chem-Bio Corporation.

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(34) *Laboratory:* Clayton Environmental Consultants, Inc.

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48050

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(35) *Laboratory:* Cole Associates, Inc.

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(36) *Laboratory:* Daily Analytical Laboratories.

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(37) *Laboratory:* Daniel J. Hartwig Associates, Inc., Director, Industrial Hygiene Services.

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(38) *Laboratory:* DataChem.

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(39) *Laboratory:* DeLisle Consulting & Laboratories, Inc.

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(40) *Laboratory:* DeYor Laboratories, Inc.

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(47) *Laboratory:* Environmental  
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(51) *Laboratory:* Environmental  
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(52) *Laboratory:* Environmental Safety  
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(53) *Laboratory:* Environmental  
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(54) *Laboratory:* Envisage  
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(55) *Laboratory:* Erlin, Hime  
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(57) *Laboratory:* Fibertec, Inc.

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(58) *Laboratory:* Foley Occupational  
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(69) *Laboratory:* Lyle Laboratories.

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43212

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(70) *Laboratory:* MJH Mineralogical  
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(72) *Laboratory:* Mathes Asbestos  
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(73) *Laboratory:* Micro Air, Inc.

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(74) *Laboratory:* Micro-Fiber  
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(75) *Laboratory*: MicroAnalytics Co.

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(76) *Laboratory*: MicroView Consulting.

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(77) *Laboratory*: Microbac Laboratories, Inc., Seaway Industrial Laboratory Subsidiary.

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(79) *Laboratory*: NATLSCO K-2.

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(80) *Laboratory*: National Petrographic Services.

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Phone: (313) 699-2686

(87) *Laboratory*: Ohio Department of Health, Division of Laboratories.

Address: 1571 Perry St., Box 2568, Columbus, OH 43266-0068

Contact: Elizabeth Clark  
Phone: (614) 421-1078

(88) *Laboratory*: PEI Associates, Inc.

Address: 11499 Chester Rd., Cincinnati, OH 45246

Contact: Craig Caldwell  
Phone: (513) 782-4700

(89) *Laboratory*: Pace Laboratories, Inc.

Address: 1710 Douglas Dr., N., Minneapolis, MN 55422

Contact: Tom L. Haverson  
Phone: (612) 544-5543

(90) *Laboratory*: Particle Data Laboratories, Ltd.

Address: 115 Hahn St., Elmhurst, IL 60126

Contact: Ron Sturm  
Phone: (312) 832-5658

(91) *Laboratory*: Pollution Control Science, Inc.

Address: 6015 Manning Rd., Miamisburg, OH 45342

Contact: Sheila J. Gaston  
Phone: (513) 866-5908

(92) *Laboratory*: Pro-Ac Asbestos Services.

Address: 5736 Tri-County Hwy., Sardinia, OH 45171

Contact: Fred Schmalz  
Phone: (513) 542-8708

(93) *Laboratory*: Professional Service Ind., Inc.

Address: 5555 Canal Rd., Cleveland, OH 44125

Contact: David Rodriguez  
Phone: (216) 447-1335

(94) *Laboratory*: Professional Service Ind., Inc., Pittsburgh Testing Lab Division.

Address: 4421 Harrison St., Hillside, IL 60162

Contact: Jerry Gruba  
Phone: (312) 449-5050

(95) *Laboratory*: Professional Service Ind., Inc., Pittsburgh Testing Laboratory Division.

Address: 2050 South Calhoun Rd., New Berlin, WI 53151

Contact: Jeff Grzeca

Phone: (414) 782-1600

(96) *Laboratory*: Randolph and Associates, Inc.

Address: 8901 North Industrial Rd., Peoria, IL 61615

Contact: Kirk Sweetland  
Phone: (309) 692-4422

(97) *Laboratory*: Reed City Hospital.

Address: 7665 Patterson Rd., P.O. Box 75, Reed City, MI 49677

Contact: James T. Reardon  
Phone: (616) 832-3271

(98) *Laboratory*: Ricerca, Inc.

Address: 7528 Auburn Rd., P.O. Box 1000, Painesville, OH 44077-1000

Contact: William O. Butler  
Phone: (216) 357-3300

(99) *Laboratory*: S.E.A., Inc.

Address: 7349 Worthington-Galena Rd., Columbus, OH 43085

Contact: Jami J. St. Clair  
Phone: (614) 888-4160

(100) *Laboratory*: S.H. Gelles Associates.

Address: 2836 Fisher Rd., Columbus, OH 43204

Contact: S.H. Gelles  
Phone: (614) 276-2957

(101) *Laboratory*: Sea Earth and Air Environmental Consultants, Inc.

Address: 4651 North Paulina, Chicago, IL 60640

Contact: Barbera Carr  
Phone: (312) 878-8337

(102) *Laboratory*: Sentry Insurance Co.

Address: 1800 North Point Dr., Stevens Point, WI 54481

Contact: Sandy VanHoldt  
Phone: (715) 346-6389

(103) *Laboratory*: Shaw Environmental Analytical Laboratory.

Address: P.O. Box 608559, Chicago, IL 60660

Contact: Michael Shaw  
Phone: (312) 973-4447

(104) *Laboratory*: Sierra Analytical and Consulting Services, Inc.

Address: 218 8th St., Ann Arbor, MI 48103

Contact: Dave Nelson  
Phone: (313) 662-1155

(105) *Laboratory*: Stat Analysis Corporation.

Address: 2201 West Campbell Park Dr., Chicago, IL 60612-3501

Contact: David E. Schwartz  
Phone: (312) 733-0551

(106) *Laboratory*: Stilson Laboratories, Inc.

Address: 170 North High St., Columbus, OH 43215

Contact: W. Martin Bell



Phone: (614) 228-4385

(107) *Laboratory*: Suburban Environmental Consultants, Ltd.  
Address: 17121 Whitman, Hazelcrest, IL 60429

Contact: Henry G. Gooday, Jr.  
Phone: (312) 335-1808

(108) *Laboratory*: TEM, Inc.  
Address: 110 West Park Ave., Suite 210, Elmhurst, IL 60126

Contact: James Tuinenga  
Phone: (312) 530-2390

(109) *Laboratory*: Testing Engineers and Consultants, Inc.

Address: P.O. Box 249, 1333 Rochester Rd., Troy, MI 48099

Contact: Scott Chandler  
Phone: (313) 588-6200

(110) *Laboratory*: The St. Paul Insurance Co.

Address: 494 Metro Square Bldg., 7th & Robert Sts., St. Paul, MN 55101

Contact: Donald J. Larsen  
Phone: (612) 221-7043

(111) *Laboratory*: Thermo Analytical/Erg.

Address: 117 North First St., Ann Arbor, MI 48104-1399

Contact: Fred Fenner  
Phone: (313) 662-3104

(112) *Laboratory*: Tremco.

Address: 10701 Shaker Blvd., Cleveland, OH 44104

Contact: Charles J. Kaloczi  
Phone: (216) 292-5000

(113) *Laboratory*: Tri-State Laboratories, Departmental of Environmental Services.

Address: 19 East Front St., Youngstown, OH 44503

Contact: Bari Lateef  
Phone: (216) 746-8800

(114) *Laboratory*: Twin City Testing Corporation.

Address: 662 Cromwell Ave., St. Paul, MN 55114

Contact: Wallace J. Nosek, Jr.  
Phone: (612) 645-3601

(115) *Laboratory*: Wadsworth/Alert Laboratories.

Address: P.O. Box 31454, Cleveland, OH 44131

Contact: Douglas R. Allenson  
Phone: (216) 642-9151

(116) *Laboratory*: Wausau Insurance Companies, Environmental Health Laboratory.

Address: 2000 Westwood Dr., Wausau, WI 54401

Contact: Thomas Stavros  
Phone: (715) 842-6810

(117) *Laboratory*: Wisconsin Occupational Health Labs.

Address: 979 Jonathon Dr., Madison, WI 53711

Contact: Richard Zimmerman  
Phone: (608) 263-8807

(118) *Laboratory*: Zimmerlin Consulting Group.

Address: 3420 East 96th St., Suite A, Indianapolis, IN 46240

Contact: Daniel J. Smith  
Phone: (317) 574-0848

(119) *Laboratory*: Zimmerlin Consulting Group.

Address: 3972 Brown Park Dr., Suite D, P.O. Box 357 Hilliard, OH 43026-0357

Contact: William Zimmerlin  
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*Regional Asbestos Coordinator*: John West, 6t-Pt, EPA, Region VI, 1445 Ross Avenue, Dallas, TX 75202-2733. (214) 655-7244, (FTS) 255-7244.

(1) *Laboratory*: ACI and Associates.

Address: 2100 Road to Six Flags East, Arlington, TX 76011

Contact: Michael J. Lee

Phone: (817) 265-7535

(2) *Laboratory*: ATEC Environmental Services.

Address: 11310 Newkirk St., Dallas, TX 75229-3382

Contact: Stephen D. Brandt

Phone: (214) 243-8931

(3) *Laboratory*: ATI Environmental Services, Inc.

Address: 2209 Wisconsin St., Suite 100, Dallas, TX 75229

Contact: Lawrence M. Thompson

Phone: (214) 620-8911

(4) *Laboratory*: Acadiana Research Laboratories, University of Southwestern Louisiana.

Address: P.O. Box 44210, Lafayette, LA 70504

Contact: Davy L. Bernard

Phone: (318) 231-6184

(5) *Laboratory*: Accredited Industrial Hygienists.

Address: P.O. Box 6152, Pasadena, TX 77506

Contact: J. P. Forsman

Phone: (713) 477-8101

(6) *Laboratory*: Accumin Analysis.

Address: 323 Hollyvale, Houston, TX 77060

Contact: William A. McHale

Phone: (713) 931-1131

(7) *Laboratory*: Aegis Associates, Inc.

Address: 44 East Ave., Suite 100/Suite 202, Austin, TX 78701-4334

Contact: Dianne Herrera

Phone: (512) 474-8789

(8) *Laboratory*: American Analytical, Inc.

Address: 218 Market St., Baird, TX 79504

Contact: Bob Dye

Phone: (915) 854-1264

(9) *Laboratory*: American Analytical, Inc. c/o Darla Environmental, Inc.

Address: 1010 Los Lomas NE., Suite 4, Albuquerque, NM 87102

Contact: Dan B. Weeks

Phone: (505) 243-2499

(10) *Laboratory*: American Analytical, Inc. c/o Joe Grimes and Associates.

Address: 1105 13th St., Lubbock, TX 79401

Contact: Bob Dye

Phone: (806) 747-5681

(11) *Laboratory*: American Analytical, Inc. c/o SAISD Maintenance.

Address: 134 East Ave. B, San Angelo, TX 76904

Contact: Bob Dye

Phone: (915) 691-0400

(12) *Laboratory*: American Interplex Corporation.

Address: 3400 Asher Ave., Little Rock, AR 72204

Contact: Joe D. Henry

Phone: (501) 664-5060

(13) *Laboratory*: Anachem, Inc.

Address: 2105 Luna Rd., Suite 390,

Carrollton, TX 75006

Contact: Hugh L. Waldrum

Phone: (214) 241-4636

(14) *Laboratory*: Applied

Environmental Services.

Address: 716 La Cruz, El Paso, TX 79902

Contact: Rafael Nickolas, Jr.

Phone: (915) 533-1147

(15) *Laboratory*: Aqua-Tech Laboratories/Allied Environmental Services, Inc.

Address: 15371 Woodforest Blvd.,

Channelview, TX 77530

Contact: Subba V. Gogineni

Phone: (713) 457-6608

(16) *Laboratory*: Arkansas

Department of Health.

Address: 4815 West Markham St., Little

Rock, AR 72205

Contact: Stan Faulk

Phone: (501) 661-2389

(17) *Laboratory*: Armstrong Forensic Laboratory, Inc.

Address: 330 Loch'n Green Trail,

Arlington, TX 76012

Contact: John M. Corn

Phone: (817) 275-2691

(18) *Laboratory*: Asbestos

Technology, Inc.

Address: P.O. Box 720427, Houston, TX

77272-0427

Contact: David A. Hanawa

Phone: (713) 772-7647

(19) *Laboratory*: Assaigai Analytical Laboratories.

Address: 7300 Jefferson, NE.,

Albuquerque, NM 87109

Contact: Dean Dupree



Phone: (505) 345-8964

(20) *Laboratory:* Austin Asbestos Analysis Service, Inc.

Address: 9804 Halifax, Austin, TX 78753

Contact: Don Brown

Phone: (512) 836-0131

(21) *Laboratory:* Building Environmental Systems, Inc.

Address: 3501 North MacArthur, Suite 400B, Irving, TX 75062

Contact: Amy L. Smith

Phone: (214) 257-0787

(22) *Laboratory:* Central Analytical Laboratories, Inc.

Address: 2600 Marietta Ave., Kenner, LA 70062

Contact: David R. Lasater

Phone: (504) 469-3511

(23) *Laboratory:* Chemron, Inc.

Address: 3038 Orchard Hill, San Antonio, TX 78230-3057

Contact: Ronald G. Oldham

Phone: (512) 493-2247

(24) *Laboratory:* Chemtex Environmental Laboratory.

Address: 1747 7th Ave., Port Arthur, TX 77642

Contact: C.N. Reddy

Phone: (409) 983-4575

(25) *Laboratory:* Continental Technical Services, Environmental Health Division.

Address: 9742 Skillman, Dallas, TX 75243

Contact: Carolyn Vercell

Phone: (214) 343-2025

(26) *Laboratory:* Diversified Environmental Technologies Incorporated.

Address: 132 West Main, Norman, OK 73069

Contact: Dan Tutt

Phone: (405) 360-7929

(27) *Laboratory:* EEG, Inc.

Address: 220A North Knoxville, Russellville, AR 72801

Contact: Anne Woker

Phone: (501) 968-6767

(28) *Laboratory:* EIRA, Inc.

Address: 161 James Dr. West, St. Rose, LA 70087

Contact: Margaret Metcalf

Phone: (504) 469-0333

(29) *Laboratory:* ENTEK Environmental Laboratories.

Address: 14285 Airline Highway, Baton Rouge, LA 70817-6232

Contact: Sham L. Sachdev

Phone: (504) 292-2900

(30) *Laboratory:* Earth Tech, Inc.

Address: RR #4, Box 4 Wagoner, OK 74467

Contact: Daryl L. Lessin

Phone: (918) 485-4910

(31) *Laboratory:* East Texas Testing Laboratory, Inc.

Address: 1717 East Erwin, Tyler, TX 75702

Contact: Gary G. LaFrance

Phone: (214) 595-4421

(32) *Laboratory:* Ensco Environmental Services.

Address: P.O. Box 8513, 333 Executive Ct., Little Rock, AR 72205

Contact: Charles F. Fowler

Phone: (501) 223-4100

(33) *Laboratory:* Entek Laboratories.

Address: 12th and Marshall, Room 281, Little Rock, AR 72202

Contact: Norma James

Phone: (501) 375-0249

(34) *Laboratory:* Environmental Analysis, Inc.

Address: Route 1, Box 12, Plainview, AR 72857

Contact: Jimmy Cunningham

Phone: (501) 272-4241

(35) *Laboratory:* Environmental Analytical Consultants.

Address: 432 North Anthony St., New Orleans, LA 70119

Contact: Michael J. Landry

Phone: (504) 482-1717

(36) *Laboratory:* Environmental Consultants, Inc.

Address: P.O. Box 17867, Shreveport, LA 71138-0867

Contact: Rhonda L. Dillingham

Phone: (318) 687-3771

(37) *Laboratory:* Environmental Management, Inc.

Address: 414 West California, Ruston, LA 71270

Contact: Robert W. Flournoy

Phone: (318) 255-0060

(38) *Laboratory:* Environmental Monitoring Service, Inc.

Address: 13008 Amarillo Ave., Austin, TX 78729

Contact: Rick Pruet

Phone: (512) 335-9116

(39) *Laboratory:* Environmental Occupational Safety, Inc.

Address: 408 North Bowser, 100A, Richardson, TX 75081

Contact: Thomas J. Palet

Phone: (214) 644-2072

(40) *Laboratory:* Environmental Research Institute, Inc.

Address: P.O. Box 2024, Tyler, TX 75710

Contact: Thomas R. McKee

Phone: (214) 877-9314

(41) *Laboratory:* Envirotest, Inc.

Address: P.O. Box 42812-414, Houston, TX 77042

Contact: Daniel J. Gerhardt

Phone: (713) 782-4101

(42) *Laboratory:* FKS Laboratory.

Address: P.O. Box 838, Hallsville, TX 75650

Contact: Fred K. Smith

Phone: (214) 668-3693

(43) *Laboratory:* Falkner Laboratories, Inc.

Address: 1039 Pearl Dr., P.O. Box 5438, Bossier City, LA 71171-5438

Contact: John I. Falkner

Phone: (318) 746-2404

(44) *Laboratory:* Geo-Environmental Services, Inc., Austin Office.

Address: 1106 Clayton Ln., Suite 523W, Austin, TX 78723

Contact: C. Wade Mullin

Phone: (512) 454-8378

(45) *Laboratory:* Gerald Garrett and Associates, Inc.

Address: 2720 Stemmons Freeway, Suite 805 South, Dallas, TX 75207

Contact: J.W. Knuckles

Phone: (214) 688-4457

(46) *Laboratory:* Hanby Analytical Labs, Inc.

Address: 4400 South Wayside St., Suite 107, Houston, TX 77087

Contact: John D. Hanby

Phone: (713) 649-4500

(47) *Laboratory:* Huey, Martin, and Associates.

Address: 5613 Bruyninckx Rd., Alexandria, LA 71303

Contact: Ben F. Martin

Phone: (318) 473-6431

(48) *Laboratory:* IHST.

Address: 6709 Parkside Ct., Arlington, TX 76016

Contact: Larry Liukonen

Phone: (817) 572-6336

(49) *Laboratory:* Institute for Research, Inc.

Address: 8330 Westglen Dr., Houston, TX 77063

Contact: Benjamin Mosier

Phone: (713) 783-8400

(50) *Laboratory:* Inter-Mountain Labs, Inc.

Address: 2506 West Main, Farmington, NM 87401

Contact: April Gil

Phone: (505) 326-4737

(51) *Laboratory:* Kemron Environmental Services.

Address: 16550 Highland Rd., Baton Rouge, LA 70810

Contact: Thomas Bauckham

Phone: (504) 293-8650

(52) *Laboratory:* Kiser Engineering, Inc.

Address: 211 North River St., Sequin, TX 78155

Contact: Roy C. Mills

Phone: (800) 426-2102



- (53) *Laboratory*: Law Engineering Testing Co.  
Address: 5500 Guhn Rd., Houston, TX 77040  
Contact: C.H. Byrd  
Phone: (713) 939-7161
- (54) *Laboratory*: Loflin Environmental Services, Inc.  
Address: 701 Bradfield, Houston, TX 77060  
Contact: James A. Murray  
Phone: (713) 931-9316
- (55) *Laboratory*: Marshall Environmental Management.  
Address: 6161 North May Ave., Suite 133, Oklahoma City, OK 73112  
Contact: Charles L. Marshall  
Phone: (405) 842-3415
- (56) *Laboratory*: Martin Marietta Manned Space Systems Quality Evaluation Laboratory.  
Address: P.O. Box 29304, New Orleans, LA 70189  
Contact: Reginald G. Salloum  
Phone: (504) 257-1766
- (57) *Laboratory*: Maxim Engineers, Inc.  
Address: 2342 Fabens, P.O. Box 59902, Dallas, TX 75229  
Contact: Steve Moody  
Phone: (214) 247-7575
- (58) *Laboratory*: Maxim Engineers, Inc.  
Address: 11601 North Lamar, Austin, TX 78753  
Contact: Fernando Yopez  
Phone: (512) 837-8851
- (59) *Laboratory*: McClelland Management Services.  
Address: 6100 Hillcroft, Suite 220, Houston, TX 77081  
Contact: Jaye R. Stanley  
Phone: (713) 995-9000
- (60) *Laboratory*: McKee Environmental Health Services.  
Address: 11114 Sage Park, Houston, TX 77069  
Contact: Ron McKee  
Phone: (713) 481-3501
- (61) *Laboratory*: NUS Corporation.  
Address: 900 Gemini, Houston, TX 77058  
Contact: John W. McCormick  
Phone: (713) 488-1810
- (62) *Laboratory*: National Asbestos Consultants Inc.  
Address: 4619 North Santa Fe, Oklahoma City, OK 73118  
Contact: Jerry Bowerman  
Phone: (405) 528-6224
- (63) *Laboratory*: New Mexico State University, Department of Biology.  
Address: Box 3AF, Las Cruces, NM 88003  
Contact: Joseph LaPointe  
Phone: (505) 646-1531
- (64) *Laboratory*: Oklahoma Asbestos Analytic Laboratory, Inc.  
Address: 15939 Southeast 29th, Choctaw, OK 73020  
Contact: Brian E. Gordon  
Phone: (405) 390-3501
- (65) *Laboratory*: Oklahoma City-County Health Department Laboratory Health Services.  
Address: 921 Northeast 23rd St., Oklahoma City, OK 73105  
Contact: Cheryl Ball  
Phone: (405) 427-8651
- (66) *Laboratory*: Oklahoma State Department of Health Special Hazard Division.  
Address: P.O. Box 53551, Oklahoma City, OK 73152  
Contact: William M. Kemp  
Phone: (405) 271-5221
- (67) *Laboratory*: Oxford Environmental Corp.  
Address: 3224 26th St., Metairie, LA 70002  
Contact: J. Robert Paterek  
Phone: (504) 391-0795
- (68) *Laboratory*: Palet Environmental Labs.  
Address: 8351 Southwestern Blvd. #237, Dallas, TX 75206  
Contact: Thomas Palet  
Phone: (214) 696-0230
- (69) *Laboratory*: Professional Service Ind., Inc., BioSearch Laboratories.  
Address: 1178 Corporate Dr. West, Arlington, TX 76011  
Contact: Sharon G. Winders  
Phone: (817) 640-4162
- (70) *Laboratory*: Professional Service Ind., Inc., PTL/Shilstone Eng. Testing Lab. Div.  
Address: 1714 Memorial Dr., Houston, TX 77007  
Contact: Charles Remkes  
Phone: (713) 224-2047
- (71) *Laboratory*: Putnam Laboratories.  
Address: 2100 Road to Six Flags East, Arlington, TX 76011  
Contact: Dan B. Weeks  
Phone: (817) 265-7535
- (72) *Laboratory*: R. Jon Laboratories.  
Address: 6203 Reed Rd., Houston, TX 77087  
Contact: John R. Speich  
Phone: (713) 645-4141
- (73) *Laboratory*: Raba-Kistner Consultants, Inc.  
Address: P.O. Box 690287, San Antonio, TX 78269-0287  
Contact: Frank B. Schweitzer  
Phone: (512) 699-9090
- (74) *Laboratory*: Regional Labs.  
Address: 919 Glen Key, Denison, TX 75020  
Contact: Cliff Wood  
Phone: (214) 463-6666
- (75) *Laboratory*: Rod Cole and Associates, Asbestos Control Division.  
Address: 4516 Lovers Lane, Suite 212, Dallas, TX 75225  
Contact: Rod Cole  
Phone: (214) 520-2925
- (76) *Laboratory*: Southwestern Laboratories, Inc.  
Address: 2575 Lone Star Dr., Dallas, TX 75212  
Contact: Lawrence M. Thompson  
Phone: (214) 631-2700
- (77) *Laboratory*: Southwestern Laboratories, Inc., EES Division.  
Address: P.O. Box 8768, Houston, TX 77249  
Contact: Phillip Yokley  
Phone: (713) 692-9151
- (78) *Laboratory*: Southwestern Public Service Co., Systems Laboratory.  
Address: P.O. Box 1261, Amarillo, TX 79170  
Contact: Ronald H. Dutton  
Phone: (806) 378-2121
- (79) *Laboratory*: Standard Environment Controls, Inc.  
Address: 5805 Callaghan Rd., Suite 201, San Antonio, TX 78228  
Contact: Al Dooley  
Phone: (512) 647-1228
- (80) *Laboratory*: Standard Testing and Eng. Co.  
Address: 660 Distributors Row, Harahan, LA 70123  
Contact: Robert E. Jones  
Phone: (504) 734-8378
- (81) *Laboratory*: Standard Testing and Engineering Co.  
Address: 3400 North Lincoln Blvd., Oklahoma City, OK 73105  
Contact: Cheri Marcham  
Phone: (405) 528-0541
- (82) *Laboratory*: Stanley Engineering Inc. and Alpha Analytical Labs, Inc.  
Address: 2700 Northwest 39th St., Oklahoma City, OK 73112  
Contact: Keith L. Stanley  
Phone: (405) 948-6505
- (83) *Laboratory*: Sunbelt Associates, Inc.  
Address: 6961 Mayo Rd., New Orleans, LA 70126  
Contact: Gary C. Allen  
Phone: (504) 242-5026
- (84) *Laboratory*: Texas Department of Health, Asbestos Abatement Branch.  
Address: 1100 West 49th St., Austin, TX 78756-3199  
Contact: Joel H. Smith  
Phone: (512) 458-7255
- (85) *Laboratory*: Texas Research Institute, Environmental Division.



Address: 9063 Bee Cave Rd., Austin, TX 78733

Contact: Gary Rolls  
Phone: (512) 263-2101

(86) *Laboratory:* The Hartford Steam Boiler Inspection and Insurance Co.

Address: 15415 Katy Fwy., Suite 300, Houston, TX 77094

Contact: Diana Spence  
Phone: (713) 578-7300

(87) *Laboratory:* Tulane University Medical Center, Department of Environmental Health Sciences.

Address: 1430 Tulane Ave., New Orleans, LA 70012

Contact: Shau Nong Chang  
Phone: (504) 588-5374

(88) *Laboratory:* U.S. Analytical, Inc.  
Address: P.O. Box 801, Abilene, TX 79604

Contact: L. Keith Davis  
Phone: (915) 698-3293

(89) *Laboratory:* U.S. Analytical, Inc.  
Address: P.O. Box 81311, Midland, TX 79709

Contact: Donald Anderson  
Phone: (915) 561-4045

(90) *Laboratory:* W.C. Runnels Consultants.

Address: Route 9, P.O. Box 1459, Beaumont, TX 77706

Contact: W. C. Runnels  
Phone: (409) 866-3019

(91) *Laboratory:* Waldemar S. Nelso and Co., Inc.

Address: 1200 St. Charles Ave., New Orleans, LA 70130

Contact: Laura E. Yager  
Phone: (504) 523-5281

(92) *Laboratory:* Weckerling Scientific Laboratories, Inc.

Address: 2602 Electronic Ln., Suite 606, Dallas, TX 75220

Contact: Alan B. Weckerling  
Phone: (214) 353-9494

(93) *Laboratory:* Weintritt Testing Laboratories, Inc.

Address: 305 Andrew Guidry Rd., P.O. Box 30162, Lafayette, LA 70593

Contact: Richard G. Tietz  
Phone: (318) 931-1560

(94) *Laboratory:* West-Paine Laboratories, Inc.

Address: 7979 G. S. R. I. Ave., Baton Rouge, LA 70820

Contact: Jonny H. Vickers  
Phone: (504) 769-4900

(95) *Laboratory:* Western Atlas International.

Address: 1733 North Padre Island Dr., Corpus Christi, TX 78408-2329

Contact: Craig Hawkins  
Phone: (512) 289-2673

Region VII—Kansas City, KS

*Regional Asbestos Coordinator:*

Wolfgang Brandner, EPA Region VII, 726 Minnesota Ave., Kansas City, KS 66101.  
(913) 236-2834, (FTS) 757-2834.

(1) *Laboratory:* A.T. Laboratory.

Address: 2449-A Iowa St., Suite 208, Lawrence, KS 66046

Contact: Terron E. Jones  
Phone: (913) 749-2794

(2) *Laboratory:* ACM Labs, Inc.

Address: 304 North Main, P.O. Box 2073, Fairfield, IA 52556

Contact: David Fleshman  
Phone: (515) 472-7402

(3) *Laboratory:* ALERT Analytical Laboratories.

Address: 1900 West 47th Pl. #302, Westwood, KS 66205

Contact: Kevin Santee  
Phone: (913) 831-4795

(4) *Laboratory:* Abshier and Associates, Ltd.

Address: 524 Northeast Malibu Dr., Lee's Summit, MO 64063

Contact: Shirley A. Abshier  
Phone: (816) 524-9203

(5) *Laboratory:* Ames Environmental.

Address: 3910 Lincoln Way, Ames, IA 50010

Contact: David Fairchild  
Phone: (515) 292-3400

(6) *Laboratory:* Asbestos Consulting and Testing.

Address: 15001 West 101st Ter., Lenexa, KS 66215

Contact: Jim A. Pickel  
Phone: (913) 492-1337

(7) *Laboratory:* Baird Scientific.

Address: P.O. Box 842, Carthage, MO 64836

Contact: Gary Baird  
Phone: (417) 358-5567

(8) *Laboratory:* Certified Environmental Management, Inc.

Address: P.O. Box 504, Salina, KS 67402-0504

Contact: Brenda A. Tolson  
Phone: (913) 536-8315

(9) *Laboratory:* Chart Services, Ltd.

Address: 4725 Merle Hay Rd., Suite 214, Des Moines, IA 50322

Contact: Mary A. Finn  
Phone: (515) 276-3642

(10) *Laboratory:* ERG Consultants, Inc.

Address: 402 C Bannister Rd., Kansas City, MO 64131

Contact: Andrew F. Oberta  
Phone: (816) 444-5804

(11) *Laboratory:* Environmental Analysis South.

Address: 1209 Broadway, Cape Girardeau, MO 63702

Contact: David Warren

Phone: (314) 334-8817

(12) *Laboratory:* Environmetrics, Inc.

Address: 10679 Midwest Industrial Blvd., St. Louis, MO 63132

Contact: Mario Vaenberg  
Phone: (314) 427-0550

(13) *Laboratory:* Groundwater Technologies Environmental Laboratories, Midwest Region.

Address: 902 West 2nd St., Wichita, KS 67203

Contact: Robert K. Kennedy  
Phone: (316) 264-4480

(14) *Laboratory:* Hall-Kimbrell Environmental Services, Inc.

Address: 4840 West 15th St., Lawrence, KS 66046

Contact: W. David Kimbrell  
Phone: (913) 749-2381

(15) *Laboratory:* Health & Architectural Assoc., Inc.

Address: 503 Main St., Belton, MO 64012

Contact: George S. McDowell  
Phone: (816) 331-0002

(16) *Laboratory:* Industrial Testing Laboratories, Inc.

Address: 2350 Seventh Blvd., St. Louis, MO 63104

Contact: William J. Lowry  
Phone: (314) 771-7111

(17) *Laboratory:* Iowa State University of Science and Technology Department of Environmental Health & Safety.

Address: 251 Nuclear Engineering Lab, Ames, IA 50011-2230

Contact: Louis J. Mitchell  
Phone: (515) 294-5359

(18) *Laboratory:* Kansas City Testing Laboratory, Chemical Division.

Address: 1669 Jefferson, Kansas City, MO 64108

Contact: Jeffery L. Jenkins  
Phone: (816) 842-7350

(19) *Laboratory:* King Environmental Services, Inc.

Address: 1287 Parkway Dr., St. Clair, MO 63077

Contact: Bonnie King  
Phone: (314) 629-1546

(20) *Laboratory:* Langston Laboratories, Inc.

Address: 2005 West 103rd Ter. (B), Leawood, KS 66206

Contact: Alan Kerschen  
Phone: (913) 341-7800

(21) *Laboratory:* Larron Laboratory.

Address: 529 Broadway, Cape Girardeau, MO 63701

Contact: David J. Roth  
Phone: (314) 334-8910

(22) *Laboratory:* MD Chemical and Testing Co., Inc.



Address: 5205 Southwest Dr., Suite B&C,  
P.O. Box 67094, Topeka, KS 66667  
Contact: Michael A. Dalrymple  
Phone: (913) 862-1503

(23) *Laboratory:* Mayhew  
Environmental Training Associates.  
Address: 901 Kentucky, Suite 305A,  
Lawrence, KS 66044  
Contact: Robert G. Williams  
Phone: (913) 842-6382

(24) *Laboratory:* Microscopic  
Analysis, Inc.  
Address: 989 Gardenvue Office Pky.,  
St. Louis, MO 63141  
Contact: Douglas N. Nimmo  
Phone: (314) 993-2212

(25) *Laboratory:* Midwest  
Environmental Testing and Training,  
Inc.  
Address: 3500 Northeast Independence  
Ave., Lee's Summit, MO 64064  
Contact: Steve Minshall  
Phone: (816) 525-6681

(26) *Laboratory:* Midwest Research  
Institute.  
Address: 425 Volker Blvd., Kansas City,  
MO 64110  
Contact: Gaylord Atkinson  
Phone: (816) 753-7600

(27) *Laboratory:* Midwestern Testing  
Labs, Inc.  
Address: P.O. Box 1657, Fairfield, IA  
52556  
Contact: Dennis Greenley  
Phone: (515) 472-1881

(28) *Laboratory:* Nebraska Testing  
Laboratories, Inc.  
Address: 4123 South 67th St., Omaha,  
NE 68117-1086  
Contact: Lynn A. Knudtson  
Phone: (402) 331-4453

(29) *Laboratory:* Net Midwest Inc.,  
Cedar Falls Division.  
Address: 1922 Main St., P.O. Box 625,  
Cedar Falls, IA 50613  
Contact: Michael McGee  
Phone: (319) 277-2401

(30) *Laboratory:* Professional Service  
Ind., Inc., PTL Division.  
Address: 5445 Highland Park Dr., St.  
Louis, MO 63110  
Contact: W.H. Beckerman  
Phone: (314) 652-4420

(31) *Laboratory:* St. Louis Testing  
Laboratories, Inc.  
Address: 2810 Clark Ave., St. Louis, MO  
63103-2574  
Contact: Rudolph B. Spanholtz  
Phone: (314) 531-8080

(32) *Laboratory:* The University of  
Iowa, University Hygienic Laboratory.  
Address: Iowa City, IA 52242  
Contact: I.A. Schwabbauer  
Phone: (319) 353-5990

(33) *Laboratory:* Wilson Laboratories.

Address: 525 North 8th St., P.O. Box  
1820, Salina, KS 67402-1820  
Contact: Gregory J. Groene  
Phone: (913) 825-7186

(34) *Laboratory:* metaTrace, Inc.  
Address: 13715 Rider Trail North, Earth  
City, MO 63045  
Contact: Marleah M. Martin  
Phone: (314) 398-8566

#### Region VIII—Denver, CO

*Regional Asbestos Coordinator:* David  
Combs, [8AT-TS], EPA, Region VIII, 1  
Denver Place, 999-18th St., RM 1300,  
Denver, CO 80202-2413. (303) 293-1744,  
(FTS) 564-1744.

(1) *Laboratory:* ATC Environmental,  
Inc.  
Address: 1515 East Tenth St., Sioux  
Falls, SD 57103  
Contact: Donald Beck  
Phone: (605) 338-0555

(2) *Laboratory:* Analytica, Inc.  
Address: 5930 McIntyre St., Golden, CO  
80403  
Contact: Daniel M. Benecke  
Phone: (303) 279-2583

(3) *Laboratory:* Associated  
Laboratories, Inc.  
Address: 1275 Ithaca Dr., Boulder, CO  
80303  
Contact: Robert M. Stieha  
Phone: (303) 691-2335

(4) *Laboratory:* Bison Engineering/  
Research.  
Address: P.O. Box 1703, Helena, MT  
59624

Contact: Patricia E. Groll  
Phone: (406) 442-5768  
(5) *Laboratory:* Colorado State  
University Department of Environmental  
Health.

Address: B120 Microbiology Building,  
Fort Collins, CO 80523  
Contact: Roy C. Warbington  
Phone: (303) 491-7038

(6) *Laboratory:* DCM Science  
Laboratory.  
Address: 12975 West 24th Pl., Golden,  
CO 80401  
Contact: Donna C. Mefford  
Phone: (303) 237-0110

(7) *Laboratory:* Datachem, Inc.  
Address: 960 West LeVoy Dr., Salt Lake  
City, UT 84123  
Contact: Lance Eggenberger  
Phone: (801) 266-7700

(8) *Laboratory:* Davis Consulting.  
Address: 4022 Helen Court, Rapid City,  
SD 57702  
Contact: Briant L. Davis  
Phone: (605) 342-4320

(9) *Laboratory:* Dixon Information,  
Inc.  
Address: 4806 Quail Point Roads, Salt  
Lake City, UT 84124

Contact: Willard C. Dixon  
Phone: (801) 278-7233

(10) *Laboratory:* Environmental Safety  
Systems, Inc.

Address: 11435 West 48th Ave., Wheat  
Ridge, CO 80033-2101  
Contact: Douglas J. Fitzgerald  
Phone: (303) 232-0707

(11) *Laboratory:* Grand Junction  
Laboratories.

Address: 435 North Ave., Grand  
Junction, CO 81501  
Contact: Brian S. Bauer  
Phone: (303) 242-7618

(12) *Laboratory:* HTI Laboratories and  
Industrial Consultants.

Address: 1806 Main Ave., Fargo, ND  
58103  
Contact: Constance S. Hodny  
Phone: (701) 232-1399

(13) *Laboratory:* HTI Laboratories and  
Industrial Consultants, Inc.

Address: 7727 West 6th Ave., Bay E,  
Lakewood, CO 80215  
Contact: Constance S. Hodny  
Phone: (303) 773-9616

(14) *Laboratory:* HTI Laboratories and  
Industrial Consultants, Inc. (Mobile  
Lab).

Address: Box 8192, Fargo, ND 58109  
Contact: Constance S. Hodny  
Phone: (701) 237-9750

(15) *Laboratory:* Hager Laboratories,  
Inc.

Address: 11234 E. Caley Ave.,  
Englewood, CO 80111  
Contact: Patricia Manning  
Phone: (303) 790-2727

(16) *Laboratory:* J&M Analytical  
Services, Inc.

Address: 1221 West 3200 South, Utah  
Branch, Nibley, UT 84321  
Contact: William R. McManus  
Phone: (801) 752-7516

(17) *Laboratory:* Northern Engineering  
and Testing, Inc.

Address: 600 South 25th St., Billings, MT  
59107  
Contact: Kathleen Smit  
Phone: (406) 248-9161

(18) *Laboratory:* Occupational Health  
Technologies, Inc.

Address: 171 University Circle, Pueblo,  
CO 81005  
Contact: Thomas F. Antonson  
Phone: (719) 566-0422

(19) *Laboratory:* Professional Service  
Ind., Inc., Pittsburgh Testing Lab. Div.

Address: 2955 South West Temple St.,  
Salt Lake City, UT 84115  
Contact: Herb Ritzman  
Phone: (801) 484-8827



(20) *Laboratory:* Sathe Analytical Lab., Inc.  
Address: P.O. Box 1527, Williston, ND 58801

Contact: Neal Falk  
Phone: (701) 572-3632

(21) *Laboratory:* South Dakota School of Mines and Tech Engineering and Mining Exp. Station.

Address: Rapid City, SD 57701  
Contact: Charles K. Shearer  
Phone: (605) 394-2291

(22) *Laboratory:* Survey, Management, and Design.

Address: P.O. Box 8021, Fargo, ND 58109  
Contact: Peter L. Mehl  
Phone: (701) 234-9556

(23) *Laboratory:* Technology Management, Inc.

Address: 685 West Gunnison, Suite #108, Grand Junction, CO 81505-7249  
Contact: Carlon C. Chambers  
Phone: (303) 242-6154

(24) *Laboratory:* University of North Dakota Energy Research Center.

Address: Box 8213, University Station, Grand Forks, ND 58202  
Contact: Gale G. Mayer  
Phone: (701) 777-5108

#### Region IX—San Francisco, CA

*Regional Asbestos Coordinator:* Jo Ann Semones, [T-52], EPA, Region IX, 215 Fremont St., San Francisco, CA 94105. (415) 974-7290, (FTS) 454-7290.

(1) *Laboratory:* ASBESTECH.

Address: 6801 Fair Oaks Blvd., Suite H, Carmichael, CA 95608  
Contact: Tommy G. Conlon  
Phone: (916) 481-8902

(2) *Laboratory:* Analytical Research Laboratories, Inc.

Address: 160 Taylor St., P.O. Box 2360, Monrovia, CA 91016  
Contact: D.W. Kohlenberger  
Phone: (818) 357-3247

(3) *Laboratory:* Applied Petrography, Inc.

Address: 8520 Sorenson Ave., Suite E, Santa Fe Springs, CA 90670  
Contact: Joanna Deane  
Phone: (213) 945-3468

(4) *Laboratory:* Asbestos Management Services, Inc.

Address: 14829 Proctor Ave., Industry, CA 91746  
Contact: Joseph Johnson  
Phone: (818) 961-4303

(5) *Laboratory:* Associated Safety Consultants.

Address: 13363 Saticoy St., #204, North Hollywood, CA 91605  
Contact: Dan Flaherty  
Phone: (818) 503-0471

(6) *Laboratory:* BSE Labs, Inc.

Address: 50 East Foothill Blvd., Arcadia, CA 91006

Contact: Charles Redinger  
Phone: (818) 355-0818

(7) *Laboratory:* Brown and Caldwell Analytical Lab.

Address: 1255 Powell St., Emeryville, CA 94608

Contact: Pat Sheppard  
Phone: (415) 428-2300

(8) *Laboratory:* California Water Labs.  
Address: 1430 Carpenter Ln., Modesto, CA 95352

Contact: Gloria Poling  
Phone: (209) 527-4050

(9) *Laboratory:* Cam Lab.

Address: 3435 Artesia Blvd., Suite 41, Torrance, CA 90504

Contact: Michael R. Tiffany  
Phone: (213) 327-8879

(10) *Laboratory:* Casalina Associates, Inc.

Address: 47-345 Mahakea Rd., Kaneohe, HI 96744

Contact: Sam L. Casalina  
Phone: (808) 239-6514

(11) *Laboratory:* Certified Testing Laboratories, Inc.

Address: 2905 East Century Blvd., South Gate, CA 90280

Contact: Stuart E. Salot  
Phone: (213) 564-2641

(12) *Laboratory:* Clark Geological Services.

Address: 3479 Edison Way, Fremont, CA 94538

Contact: Joyce Lucas-Clark  
Phone: (415) 659-1784

(13) *Laboratory:* Clayton Environmental Consultants, Inc.

Address: 1252 Quarry Ln., Pleasanton, CA 94566

Contact: Warren C. Steele  
Phone: (415) 426-2600

(14) *Laboratory:* Consulting Health Services.

Address: P.O. Box 1625, El Cajon, CA 92022

Contact: Kenneth S. Cohen  
Phone: (619) 579-6233

(15) *Laboratory:* Conteck.

Address: P.O. Box 3065, Newport Beach, CA 92863

Contact: Emily Collier  
Phone: (714) 645-0482

(16) *Laboratory:* Dan Napier & Associates.

Address: 15342 Hawthorne Blvd., Suite 207, P.O. Box 1540, Lawndale, CA 90260-6440

Contact: Dan Napier  
Phone: (213) 644-1924

(17) *Laboratory:* Donald Johnson.

Address: 7737 Fair Oaks Blvd., Suite #452, Carmichael, CA 95603

Contact: Donald Johnson

(18) *Laboratory:* Dyer Laboratories, Inc.

Address: West 237th St., Torrance, CA 90505

Contact: D.L. Dyer  
Phone: (213) 530-3322

(19) *Laboratory:* E and A Env'l Service, Inc.

Address: 8132 Firestone Blvd., Suite 142, Downey, CA 90241

Contact: Ebbiteanga Abili

(20) *Laboratory:* EMS Laboratories.

Address: 211 Pasadena Ave., South Pasadena, CA 91030-2919

Contact: Bernadine M. Kolk  
Phone: (213) 257-2002

(21) *Laboratory:* EPI Center.

Address: 2610 Santa Monica Blvd., Santa Monica, CA 90404

Contact: Wm. Don McDougall  
Phone: (213) 828-0996

(22) *Laboratory:* Env'l Safety Systems, Inc.

Address: 9041-17 Dice Rd., Santa Fe Springs, CA 90670

Contact: Al Fahrenbruch  
Phone: (213) 944-2520

(23) *Laboratory:* Enviromed, Inc.

Address: 2200 East River Rd., Suite 122, P.O. Box 30854, Tucson, AZ 85718

Contact: Steven Pike  
Phone: (602) 577-0818

(24) *Laboratory:* Environmental In Ovations.

Address: 7700 Edgewater Dr., Suite 665, Oakland, CA 94621

Contact: Kip Fout  
Phone: (415) 632-0104

(25) *Laboratory:* Eureka Laboratories, Inc.

Address: 3401 La Grande Blvd., Sacramento, CA 95823

Contact: Steven K. Leung  
Phone: (916) 428-1193

(26) *Laboratory:* Fiberquant, Inc.

Address: 4824-B South 35th St., Phoenix, AZ 85040

Contact: Larry Pierce  
Phone: (602) 276-6138

(27) *Laboratory:* Firemans Fund, Environmental Laboratory.

Address: 3700 Lakeville Highway, Petaluma, CA 94952

Contact: Jerry Tuma  
Phone: (707) 778-4160

(28) *Laboratory:* Forensic Analytical Specialties, Inc.

Address: 3777 Depot Rd., Suite 408, Hayward, CA 94545

Contact: Stephen A. Shaffer  
Phone: (415) 887-8828



- (29) *Laboratory*: GT Environmental Laboratories, Western Region.  
Address: 4080-C Pike Ln., Concord, CA 94520  
Contact: Safy Khalifa  
Phone: (415) 685-7852
- (30) *Laboratory*: Galson Technical Services, Inc.  
Address: 2116 Berkeley Way, Berkeley, CA 94704  
Contact: Chuck Siu  
Phone: (415) 848-0389
- (31) *Laboratory*: Gemeni Petrographic Investigations.  
Address: P.O. Box 2127, Novato, CA 94948  
Contact: Peter A. Almendinger  
Phone: (415) 892-9016
- (32) *Laboratory*: General Analytical Laboratories, Building and Home Inspection Engineers.  
Address: 15708 Pomerado Rd., Suite 202, Poway, CA 92064  
Contact: William J. DeBerry  
Phone: (619) 451-0713
- (33) *Laboratory*: Geowest Analytical.  
Address: P.O. Box 2659, Novato, CA 94948  
Contact: Gregory P. Arnold  
Phone: (415) 897-6805
- (34) *Laboratory*: Hall-Kimbrell Environmental Services.  
Address: 646 South Brea Canyon Rd., Walnut, CA 91789  
Contact: Joel K. Davidson  
Phone: (714) 594-3232
- (35) *Laboratory*: Hall-Kimbrell Environmental Services.  
Address: 2615 South King St., Suite 2A, Honolulu, HI 96826  
Contact: S. Gil Cobb  
Phone: (913) 749-2381
- (36) *Laboratory*: Health Sciences Associates.  
Address: 10771 Noel St., Los Alamitos, CA 90720  
Contact: Kathy S. Jones  
Phone: (714) 220-3922
- (37) *Laboratory*: IT Corporation—Cerritos.  
Address: 17605 Fabrica Way, Cerritos, CA 90701  
Contact: Mary Hammons  
Phone: (213) 921-9831
- (38) *Laboratory*: Industrial Analytical Lab, Inc.  
Address: 3615 Harding Ave., Honolulu, HI 96816  
Contact: Mark R. Hagadone  
Phone: (808) 735-0422
- (39) *Laboratory*: J.M. Cohen, Inc.  
Address: 155 Bovet Rd., Suite 300, San Mateo, CA 94402  
Contact: Joel Cohen  
Phone: (415) 349-9737
- (40) *Laboratory*: Kelco Asbestos Analytical Services.  
Address: P.O. Box 1339, Fremont, CA 94538  
Contact: Bonnie Lee Kellogg  
Phone: (415) 659-9751
- (41) *Laboratory*: McClara Laboratory, Asbestos Control Division.  
Address: 1231 Gary Way, Carmichael, CA 95608  
Contact: Michael McClara  
Phone: (916) 489-9202
- (42) *Laboratory*: McCrone Environmental Services, Inc.  
Address: 120 Newport Center Dr., Suite 240, Newport Beach, CA 92660  
Contact: William Millar  
Phone: (714) 759-6619
- (43) *Laboratory*: Med-Tox Associates, Inc.  
Address: 1229 Morena Blvd., San Diego, CA 92110  
Contact: Thomas Vernon Dagenhart  
Phone: (619) 276-8843
- (44) *Laboratory*: Meixa Tech.  
Address: P.O. Box 844, Cardiff, CA 92007  
Contact: Bryan R. Burnett  
Phone: (619) 436-7714
- (45) *Laboratory*: Micro-Chem Laboratories.  
Address: 1550 Dell Ave., Suite E, Campbell, CA 95008  
Contact: Robert O'Neill  
Phone: (408) 374-3360
- (46) *Laboratory*: Microanalytical Services, Inc.  
Address: 201 South Lake Ave., Suite 402, Pasadena, CA 91101  
Contact: Nancy Carraway  
Phone: (818) 356-7400
- (47) *Laboratory*: Microprobe.  
Address: 5104 East Burns, Tucson, AZ 85711  
Contact: James R. Kessler  
Phone: (602) 745-1189
- (48) *Laboratory*: Montgomery Laboratories.  
Address: 555 East Walnut St., P.O. Box 7009, Pasadena, CA 91109-7009  
Contact: Joan A. Oppenheimer  
Phone: (818) 796-9141
- (49) *Laboratory*: National Asbestos Labs, Inc.  
Address: 2235 Polvorosa Ave., Suite 220, San Leandro, CA 94577  
Contact: Kevin Smith  
Phone: (415) 357-9555
- (50) *Laboratory*: OKist.  
Address: 300 Page St., San Francisco, CA 94102  
Contact: Olga Kist  
Phone: (415) 552-4595
- (51) *Laboratory*: One in a Millien.  
Address: 2678 O'Harte Rd., San Pablo, CA 94806  
Contact: Sandra J. Millien  
Phone: (415) 724-0193
- (52) *Laboratory*: Particle Diagnostics, Inc.  
Address: 1274 Morena Blvd., San Diego, CA 92109  
Contact: Dan Baxter  
Phone: (619) 276-2200
- (53) *Laboratory*: Precision Micro-Analysis.  
Address: 5665 Power Inn Rd., Suite 102, Sacramento, CA 95824  
Contact: J. Benjamin Smith  
Phone: (916) 381-0694
- (54) *Laboratory*: Quartech.  
Address: P.O. Box 426, Del Mar, CA 92014  
Contact: Sarjant Singh  
Phone: (619) 755-6270
- (55) *Laboratory*: R.J. Lee Group, Inc.  
Address: 2424 6th St., Berkeley, CA 94710  
Contact: Jesse E. Fisher  
Phone: (415) 486-8319
- (56) *Laboratory*: Radiation Detection Co.  
Address: 162 Wolfe Rd., P.O. Box 1414, Sunnyvale, CA 94088  
Contact: Susan Gagner  
Phone: (408) 735-8700
- (57) *Laboratory*: San Diego Gas & Electric Co., Environmental Analysis Section.  
Address: P.O. Box 1831, San Diego, CA 92112  
Contact: Thomas Reel  
Phone: (619) 686-2545
- (58) *Laboratory*: Santa Rita Analytical.  
Address: 2525 East Prince Rd. #77, Tucson, AZ 85716  
Contact: James C. Faas  
Phone: (602) 795-2440
- (59) *Laboratory*: Schwein/Christensen Eng. Ltd.  
Address: 3397 Mt. Diablo Blvd., Suite E, Lafayette, CA 94549  
Contact: Conrad Christensen  
Phone: (415) 284-3311
- (60) *Laboratory*: Science Applications International Corp.  
Address: 4224 Campus Point Ct., San Diego, CA 92121  
Contact: Linda Krokenberger  
Phone: (619) 535-7521
- (61) *Laboratory*: Scientific Environmental Laboratories.  
Address: 924 Industrial Ave., Palo Alto, CA 94303  
Contact: Shui Fong  
Phone: (415) 856-6011



(62) *Laboratory:* Smith-Emery Co.,  
Environmental/Chemical Dept.

Address: 781 East Washington Blvd., Los  
Angeles, CA 90021

Contact: Jack C. Carmody  
Phone: (213) 749-3411

(63) *Laboratory:* Soil and Water  
Laboratory.

Address: 14072 West Park Ave., Boulder  
Creek, CA 95006

Contact: R.A. Lemon  
Phone: (408) 338-3053

(64) *Laboratory:* Southwest Hazard  
Control, Inc.

Address: 10941 North Coyote Ln.,  
Tucson, AZ 85741

Contact: Gerald J. Karches  
Phone: (602) 744-1060

(65) *Laboratory:* Sunshine  
Environmental Laboratory.

Address: 2681 Lincoln Rd., Las Vegas,  
NV 89115

Contact: Nathan M. Lencioni  
Phone: (702) 452-3952

(66) *Laboratory:* TMA/NORCAL  
Corporation.

Address: 2030 Wright Ave., Richmond,  
CA 94804

Contact: Rosemary Sliney  
Phone: (415) 235-2633

(67) *Laboratory:* Tabershaw and  
Associates, Inc.

Address: 3938 East Grant Rd. #433,  
Tucson, AZ 85712

Contact: Irving R. Tabershaw  
Phone: (602) 299-3302

(68) *Laboratory:* Tennant and  
Terstegen Consultants.

Address: P.O. Box 16356, Fresno, CA  
93755

Contact: David R. Terstegen  
Phone: (209) 227-4870

(69) *Laboratory:* Toxscan, Control  
Lab.

Address: 1234 Highway I, Watsonville,  
CA 95076

Contact: Frank Shields  
Phone: (408) 724-4427

(70) *Laboratory:* Truesdale  
Laboratories, Inc.

Address: 14201 Franklin Ave., Tustin,  
CA 92680

Contact: Karl Schiller  
Phone: (714) 730-8239

(71) *Laboratory:* United States  
Testing, Inc. EST-West.

Address: 3491 Kurtz St., P.O. Box 80985,  
San Diego, CA 92110

Contact: Craig Sobotka  
Phone: (619) 222-0544

(72) *Laboratory:* Unitek  
Environmental Consultants, Inc.

Address: 2889 Mokumoa St., Honolulu,  
HI 96819

Contact: Irene Enoki  
Phone: (808) 834-1444

(73) *Laboratory:* University  
Associates, Ltd.

Address: 3791 North Camino De Oeste,  
Tucson, AZ 85745

Contact: John D. Repko  
Phone: (602) 743-7918

(74) *Laboratory:* W.H. Cunningham  
and Assoc., Inc.

Address: 11 Embarcadero West, #210,  
Oakland, CA 94607

Contact: W.H. Cunningham  
Phone: (415) 543-3934

(75) *Laboratory:* Weck Laboratories,  
Inc.

Address: 14859 East Clark Ave.,  
Industry, CA 91745-1396

Contact: F.J. Weck  
Phone: (818) 336-2139

(76) *Laboratory:* Wesco Laboratories.

Address: 14 Galli Dr., Suite A, Novato,  
CA 94947

Contact: John Hembrow-Beach  
Phone: (415) 883-6425

(77) *Laboratory:* Western  
Technologies, Inc.

Address: 3737 East Broadway Rd., P.O.  
Box 21387, Phoenix, AZ 85036

Contact: Denice Miller  
Phone: (602) 437-3737

#### Region X—Seattle, WA

##### *Regional Asbestos Coordinator:*

Walter Jasper, EPA, Region X, 1200  
Sixth Ave. (AT-083), Seattle, WA 98101.  
(206) 442-4762, (FTS) 399-2870.

(1) *Laboratory:* AM TEST, Inc.

Address: 14603 Northeast 87th St.,  
Redmond, WA 98052

Contact: John T. Dailey  
Phone: (206) 885-1664

(2) *Laboratory:* ASBES-LAB.

Address: Box 2742 CS, Pullman, WA  
99165-0936

Contact: Monnie Choong  
Phone: (509) 332-8894

(3) *Laboratory:* Analab Microscopy.

Address: 19101 Southwest Red Wing Ct.,  
Lake Oswego, OR 97035

Contact: John C. Ruby  
Phone: (503) 639-9006

(4) *Laboratory:* Asbesto-Test.

Address: P.O. Box 51, 11995 Apple Cove  
Ln., Kingston, WA 98346

Contact: ArLynn H. Patterson  
Phone: (206) 297-4315

(5) *Laboratory:* Asbestos Microscopy,  
Inc.

Address: 10463 Northeast Fourth Plain  
Rd., Vancouver, WA 98662

Contact: Paul Carlson  
Phone: (206) 256-6455

(6) *Laboratory:* Bennett Laboratories,  
Inc.

Address: 901 South 9th St., P.O. Box  
5816, Tacoma, WA 98405

Contact: M.E. Lough  
Phone: (206) 272-4507

(7) *Laboratory:* CHASC Consultants.

Address: 5720 Southwest 52nd Ave.,  
Portland, OR 97221

Contact: David D. Coward  
Phone: (503) 245-8381

(8) *Laboratory:* Cascade Analytical  
Service.

Address: 3640 South Cedar St., Suite 'O',  
Tacoma, WA 98409

Contact: Juin B.J. TeVrucht  
Phone: (206) 472-6909

(9) *Laboratory:* Coffey Laboratories,  
Inc.

Address: 4914 Northeast 122nd Ave.,  
Portland, OR 97230

Contact: Fredrick C. Colley  
Phone: (503) 254-1794

(10) *Laboratory:* Columbia Analytical  
Svcs., Inc.

Address: 1152 3rd Ave., Longview, WA  
98632

Contact: Terry Hopkins  
Phone: (206) 577-7222

(11) *Laboratory:* Eastwood Testing  
Laboratory, Inc.

Address: 7325 Southeast 133rd Pl.,  
Portland, OR 97236

Contact: Misko Maynard  
Phone: (503) 761-0922

(12) *Laboratory:* Environmental  
Consulting Services, Inc.

Address: 8844 32nd SW., Seattle, WA  
98126

Contact: Sheila Monroe  
Phone: (206) 935-5758

(13) *Laboratory:* Environmental  
Consulting Svcs., Inc.

Address: 1259 Willamette St., Eugene,  
OR 97401

Contact: Richard W. Carlin  
Phone: (503) 345-6790

(14) *Laboratory:* Environmental  
Consulting Svcs., Inc.

Address: 3601 Northwest Yeon, Suite  
134, Portland, OR 97210

Contact: Sheila Monroe  
Phone: (503) 227-7210

(15) *Laboratory:* Environmental Safety  
Systems, Inc.

Address: 12822 Gateway Dr., Seattle,  
WA 98168

Contact: Richard C. Thompson  
Phone: (206) 243-6573

(16) *Laboratory:* Environmental  
Science and Eng. Inc.

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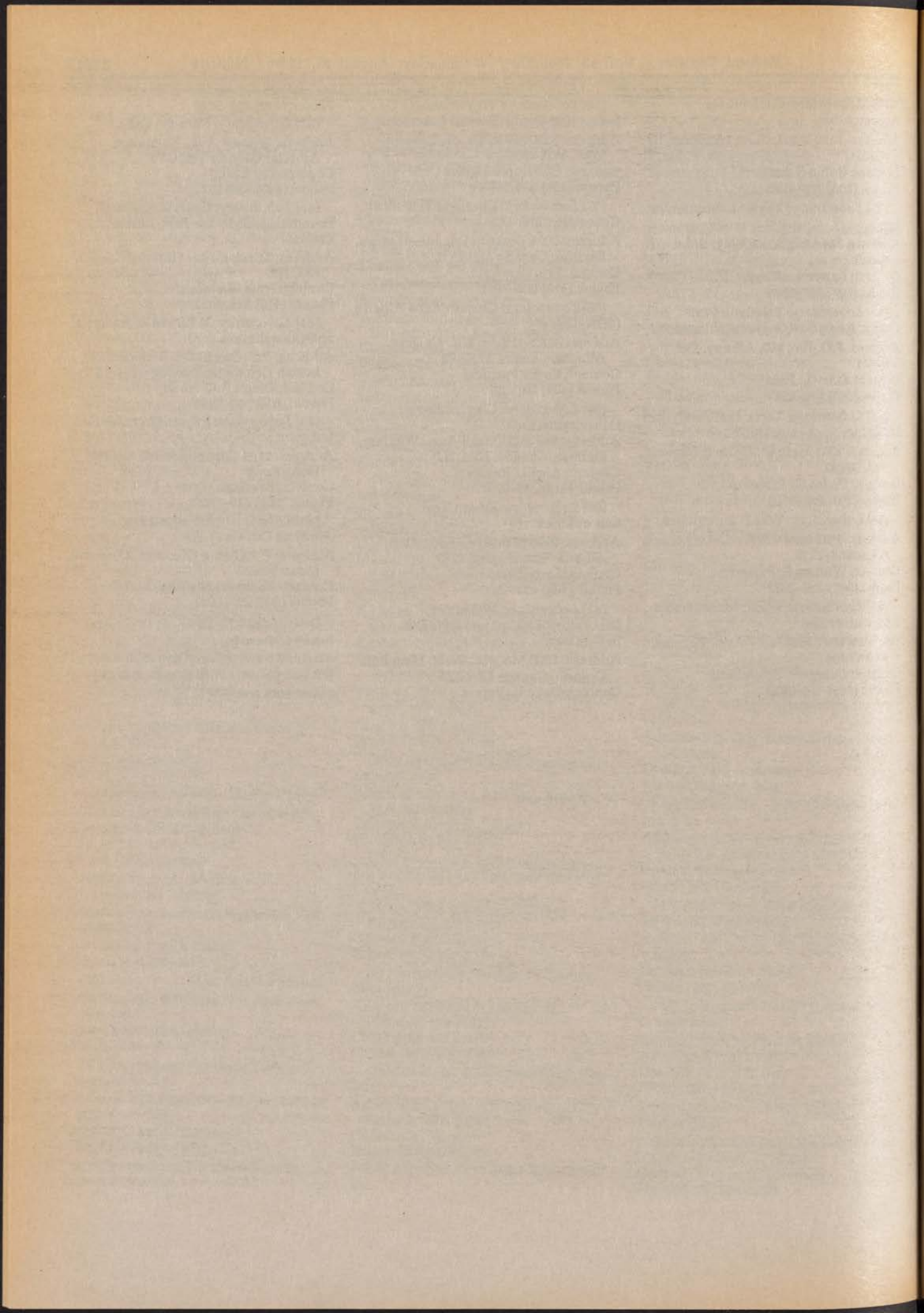
Joseph J. Merenda,

Acting Director, Office of Toxic Substances.

[FR Doc. 88-19415 Filed 8-30-88; 8:45 am]

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# Environmental Protection

Wednesday  
August 31, 1988

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## Part III

### Environmental Protection Agency

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Draft State Hazardous Waste Capacity  
Assurance Guidance; Notice



**ENVIRONMENTAL PROTECTION AGENCY**

(FRL-3435-5)

**Draft State Hazardous Waste Capacity Assurance Guidance****AGENCY:** Environmental Protection Agency.**ACTION:** Notice of Draft Guidance for Review and Comment.

**SUMMARY:** The Environmental Protection Agency's (EPA) Office of Solid Waste and Emergency Response (OSWER) is making available for review and comment draft guidance to States for meeting the capacity assurance requirements under section 104(c)(9) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9604(c)(9). Comment is especially sought on alternative approaches to achieving interstate agreements for future hazardous waste management. The final document will provide guidance to State officials on how to prepare a State Capacity Assurance Plan (CAP) to comply with the requirements of the statute.

The provision of such guidance to the States is necessary so that each State will be fully aware of the criteria and content the Agency will use to determine what constitutes in "adequate assurance" of hazardous waste treatment/disposal capacity for wastes reasonably expected to be generated within their State for the next 20 years.

Should a State fail to provide such an assurance, monies for Superfund remedial action will be withheld from that State after the statutory deadline for the assurance, i.e., October 17, 1989.

**DATE:** Comments must be submitted (postmarked) no later than September 30, 1988.

**ADDRESSES:** Comments on the document may be addressed to Patricia Mercer, Mail Code OS-110, Office of Solid Waste and Emergency Response, Cross-Media Analysis Staff, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Malcolm Bliss (Project Manager) at (202) 475-9829.

**SUPPLEMENTARY INFORMATION:**

Recognizing that many States have extensive experience in defining hazardous waste treatment and disposal capacity needs and plans, EPA determined it should utilize this State expertise to help develop hazardous waste treatment and disposal capacity

assurance guidance. To further this objective, EPA entered into a cooperative agreement with the National Governor's Association (NGA) to develop a forum to discuss capacity related issues and make recommendations to EPA on the nature of capacity assurance guidance. NGA was to examine alternatives in four broad areas: (1) Data and projections; (2) the role of waste minimization; (3) interstate agreements; and (4) plans for developing new capacity. In light of the substantial interest and debate which occurred on the interstate issues, (e.g., interstate agreements and resolution of differences among States) it was determined that alternative approaches to these issues should be examined. The documents published today for public comment are the result of work products received under the NGA Cooperative Agreement and the alternative discussed above (See Chapters 1 and 2 and note the deletion of Appendix A).

**Summary of Capacity Assurance Plan Contents**

The following is a summary of the key elements identified as critical in the development of capacity assurance plans (CAPs):

**Data and Projections**

Establishes procedures for States to use to determine the amount of hazardous waste generated within their borders, the amount of treatment and disposal capacity available within their state; the amount of waste imported and exported from and to other States; and the amount of generation and capacity projected to be available over a twenty year period. Extensive use is made of EPA's biennial report data, TSDRF survey data, and technical support prepared by EPA's Office of Solid Waste.

**Uses of Waste Minimization**

Explains how States may use waste minimization as part of their strategy for making capacity assurances, and establishes procedures for reporting to EPA on elements of waste minimization programs, estimating the effects of such programs on long-term capacity needs, communicating with industry, and measuring the effects of waste minimization programs.

**Plans for Developing New Capacity**

Explains how States whose data and projections indicate the need for additional in-state capacity can demonstrate to EPA that they have an adequate plan for developing new capacity; also establishes reporting procedures for State facility siting

programs and milestones for capacity development.

**Interstate Agreements**

Explains how States which must rely on the availability of treatment and disposal capacity in another State can make a CERCLA section 104(c)(9) capacity assurance. In accordance with the Statute, a valid interstate agreement is necessary for an exporter State to assure availability of out-of-State capacity.

**Summary of Interstate Alternative Approaches**

The following summary identifies key differences in the interstate alternatives articulated in the documents that follow:

**Nature of the Interstate Agreement****NGA Recommendation**

All States should be required to provide a generic interstate agreement (1) recognizing current levels of imports/exports; (2) agreeing to participate in the planning and resolution procedure outlined in the guidance; and (3) agreeing to carry out the siting activities contained in their capacity assurance plan.

**Alternative**

All exporting and importing States should provide generic interstate agreements. This agreement acknowledges the waste management practices contained in their capacity assurance documentation including all import and export waste flows. In the event that some importing States cannot sign the generic agreement, affected exporting States should seek separate bilateral agreements with another State with excess treatment and/or disposal capacity.

**Who Shall Sign an Interstate Agreement?****NGA Recommendation**

EPA should require each State to sign a generic interstate agreement as a necessary condition for obtaining EPA's approval of its CAP. States failing to provide the generic interstate agreement should be subject to CERCLA 104(c)(9) sanctions. Failure of an importing State to provide a generic agreement would not necessarily impose an obligation on exporting States to secure a specific interstate agreement.

**Alternative**

Exporting States must have an interstate agreement from the importing State that acknowledges available treatment and/or disposal capacity in



that State. Failure of an exporting State to obtain such an interstate agreement would make its CERCLA 104(c)(9) assurance statutorily insufficient. Exporting States could obtain an interstate agreement with any other importing State that demonstrates it has surplus capacity.

#### *Nature of Conflict Resolution Procedures*

#### **NGA Recommendation**

EPA should develop a formal process to deal with interstate disputes over a period of four years beginning with the submittal of the CAPs. Steps in the process should include:

- (1) National analysis and publication of data on interstate waste flows;
- (2) Convening of a forum to raise and discuss interstate issues which may lead to regional or multi-state planning efforts;
- (3) Refinement of "reasonableness" criteria for export practices;
- (4) Resolution of interstate conflicts;
- (5) Application of CERCLA 104(c)(9) sanctions against States not meeting "reasonableness" criteria;
- (6) EPA's concurrence under RCRA consistency for importing States to restrict quantity of waste transported from an exporting State found to be unreasonable.

#### **Alternative**

This version of the guidance acknowledges EPA's responsibility only to ensure that States provide adequate assurances of capacity. All conflicts should be negotiated and resolved at the State level prior to submittal of the CAPs. EPA will not undertake to determine the reasonableness of levels of interstate waste flows.

#### *Final Authority to Determine Unreasonable Exports*

#### **NGA Recommendations**

If interstate issues cannot be resolved informally or through regional or multi-state planning efforts, importing States would have the ability to petition EPA for a formal hearing on whether or not a particular exporting State violates "reasonableness" criteria. EPA is expected to define objective criteria for application to individual State conflicts. EPA would develop a formal record and issue a determination supporting or denying the aggrieved State's petition. The EPA finding would be the basis for applying CERCLA 104(c)(9) sanctions.

#### **Alternative**

The final authority for determining unreasonable export practices should rest with importing States. Importing

States may exercise this simply by withholding, or revoking, their interstate agreement with an exporting State. Exporting States not able to execute an agreement for available treatment and/or disposal capacity in another importing State would then be subject to CERCLA 104(c)(9) sanctions.

Date: August 22, 1988.

J. Winston Porter,

Assistant Administrator, Office of Solid Waste and Emergency Response.

#### **NGA Recommendations on Draft State Hazardous Waste Capacity Assurance Guidance**

#### **Chapter I—Introduction and Overview of the Capacity Assurance Process**

This document provides guidance to state officials on how to prepare a state Capacity Assurance Plan (CAP). Each state must complete a CAP by October 17, 1989 to comply with the requirements of section 104(c)(9) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. This section requires each state to assure the Administrator that adequate capacity will exist to manage the hazardous waste created in the state over the next twenty years (see below). A state's failure to submit an approved CAP by the October 1989 deadline will prohibit the state from receiving Superfund money for remedial actions until such time as assurance is approved by EPA. The availability of funds for emergency removal action is not affected by this requirement.

**"SITING.**—Effective 3 years after enactment of the Superfund Amendments and Reauthorization Act of 1986, the President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that the State will assure the availability of hazardous waste treatment or disposal facilities which—

(A) Have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the 20-year period following the date of such contract or cooperative agreement and to be disposed of, treated, or destroyed,

(B) Are within the State or outside the State in accordance with an interstate agreement or regional agreement or authority.

(C) Are acceptable to the President, and

(D) Are in compliance with the requirements of Subtitle C of the Solid Waste Disposal Act."

—Section 104(k) of the Superfund Amendments and Reauthorization Act of 1986 amending section 104(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (commonly known as the "Superfund").

#### **Legislative Background on SARA Section 104(k)**

The Congress added these requirements to CERCLA through the Superfund Amendments and Reauthorization Act of 1986 (SARA). The purpose of this provision was straightforward: Superfund money should not be spent in states that are taking insufficient steps to avoid the creation of future Superfund sites. The Congress recognized that a safe and rational hazardous waste management program for the nation depended in part on the creation of new facilities employing the most advanced technologies. While many states enacted or planned to enact siting legislation, Congress concluded that few, if any, were developing policies and siting programs that would assure continued facility capacity in the long term.

Congress stressed that a successful state siting program should recognize three key principles. First, the program should require a complete technical analysis of all proposed sites prior to their selection. Second, site selection must be accompanied by full public participation. Third, the process of site selection should find a way to transcend blanket local vetoes. The Congress further stressed, however, that merely having such programs in place would not satisfy the requirements of this section. Each state must provide assurances that their legislative program can work and will be used. The siting process may differ between states, but each program should make the best of existing facilities in the short term and assure continued facility capacity in the long term.

Finally, Congress did not envision that every state would need to develop redundant or unneeded capacity. A site in every state is not required. In some cases, multi-state efforts may be appropriate, requiring some assurance that access exists to out-of-state facilities. Such access is to be assured through "an interstate agreement or regional agreement or authority."

In passing this statute, Congress did not explicitly address what should constitute a state assurance to EPA.



Much was left to interpretation. Moreover, the nature of the data available, the interstate market, and methods to predict future waste generation demand a flexible approach in interpreting and implementing this requirement.

In EPA's view, the CAP should serve a threefold purpose. First, it should effectively demonstrate to the Agency that each state is taking measures to ensure that the hazardous waste created within its borders are and will be effectively managed. Second, it should establish a process under which interstate issues related to hazardous waste management are properly resolved and multi-state planning efforts are encouraged. Third, the CAP should serve as a document to educate and inform the public on the state's strategy for managing the hazardous waste generated by its industry and other sources.

#### *EPA's Responsibility To Implement the SARA Section 104(k) Requirements*

The Agency is responsible for developing a procedure for implementing the requirements of CERCLA Section 104(c)(9). The Administrator plans to carry out this process through three major efforts: (1) Publish guidance explaining how to prepare a state Waste Capacity Assurance Plan (CAP) for submission to EPA; (2) provide technical assistance and limited financial resources to the states; and (3) review and approve the state submissions.

Because of the many complex issues involved, EPA sought the advice of state officials, industry, private citizens, and public interest groups as part of developing this guidance package. The recommendations contained in this document reflect the views of these affected parties and specifically address the following problem areas:

- Data used throughout the states varies in uniformity. To help states convert their data to a uniform and consistent format for reporting purposes, EPA will provide technical assistance for states that use the New Biennial Report System, the Old Biennial Report System, or equivalent data from state reports or manifest data.

- Waste projections techniques are uncertain and under development. To accommodate the different approaches available to project waste generation, the guidance permits states to develop their own procedures as long as they meet general criteria.

- Waste minimization is a valuable waste management tool but its results are difficult to predict. To encourage states to develop waste minimization

programs, the assurance process grants maximum flexibility to states in calculating the effects of such programs on the demand for future management capacity.

- The current waste management market is multi-state, and privately-run for the most part. To allow states to effectively assure the availability of capacity in other states without executing complicated interstate agreements the guidance requires states to enter into a process to resolve interstate waste management issues and assure the availability of management capacity over the long term.

#### *The Role of the States in Implementing the Capacity Assurance Requirements*

Approximately 90 percent of the hazardous waste generated by industry today is handled in facilities owned by the generator and dedicated to that firm's waste; the remainder of the waste is handled in commercial facilities located throughout the U.S. The EPA recognizes that while states regulate, they do not control the development or operation of hazardous waste management facilities both privately and commercially operated. The requirement that states "assure" the availability of management capacity to future hazardous waste generators ostensibly requires states to control what is beyond their current purview.

The Agency believes the intent of the law was far more pragmatic. In a practical sense, states may not control the current hazardous waste market system, but state policies can influence it. To fulfill the intent of the law, a state must use the CAP as an opportunity to review its policies regarding the development and maintenance of sound hazardous waste management facilities. A state must look to the needs of its industry and determine whether current state policies allow or facilitate the development of environmentally safe treatment and disposal options for that industry. It must determine whether a lack of adequate capacity in the state is a result of restrictive policies that encourage industry to send their waste elsewhere. Finally, if substantial capacity shortfalls are projected in the CAP, the state must employ one or more of the options outlined in this guidance: create new capacity in the state through changes in state policy, institute programs to reduce the amount of waste generated in the state, or enter into multi-state planning efforts to site management capacity.

#### *Evaluation Criteria to be Used by EPA*

To comply with section 104(c)(9), each state must complete the reporting

requirements outlined in this guidance document. The CAP submitted by the state will not be approved unless it meets the following criteria:

1. The state must submit complete and accurate information showing current generation, waste management capacity, imports, and exports.

2. The state must show that its projection of waste generation and demand capacity meet the following guidelines:

- (a) The underlying economic assumptions used in the projections should reflect existing or official projections of state economic activity unless otherwise justified by the state;

- (b) The projections must account for major waste producing industries and the range of possible changes in the economic behavior of these industries;

- (c) The projections must account for one-time only wastes (e.g., CERCLA or RCRA remedial corrective actions);

- (d) The projections must correctly incorporate effects of waste minimization as outlined in the state's plan; and

- (e) The projections must document assumptions regarding waste imports and exports.

3. For states that rely on waste minimization to reduce the demand for capacity, the state must demonstrate that:

- (a) The estimated reductions in wastes are based on a sound technical evaluation of the potential effects of waste minimization in the state. (Available information, such as existing surveys of specific industries and engineering analysis of potential reductions, may be used in this evaluation);

- (b) The resources committed to implementing the waste minimization strategy are consistent with the plan set forth by the state; and,

- (c) The milestones for projected accomplishments in waste minimization are reasonable and there is a plan to implement these activities.

4. States must execute the agreement set forth in Chapter II and described in Appendix A if they plan to use management capacity in other states at any time over the 20-year "assurance" timeframe.

5. For states showing capacity shortfalls in its projections, the state must meet the following requirements:

- (a) It must document the type and quantity of capacity needed and the state procedures that would result in the development of such capacity, including participation in interstate or regional planning efforts;



(b) If additional capacity is to be created inside the state, the CAP must show that state and local laws, regulations, practices, and policies will not hinder the development of additional capacity, when needed, and are consistent with the proposed plan submitted in the CAP. Laws, regulations, policies, and practices that may be found to hinder development of additional capacity include, but are not limited to the following:

(i) Local preemption powers not based on environment, health, or safety concerns with no ability for the state to appeal or rectify local decisions;

(ii) Absence of a siting procedure with clearly defined steps, including opportunity for public review and comment, and clear time periods between permit review, comment, and approval/denial;

(iii) The enactment of rules that may be viewed as discriminatory, such as limits on facility size, types of waste allowed based on origin of waste, and prohibition of waste facilities not based on environmental, health, or safety considerations; and

(iv) A demonstrated history of failed efforts to create additional capacity in the presence of sufficient demand for that capacity.

(c) For states that plan to rely upon capacity outside the state to address the projected shortfall, the CAP must show that such reliance does not conflict with the "reasonableness" criteria set forth in Appendix A.

EPA expects the states to prepare and submit an assurance to the Administrator no later than October 17, 1989. EPA also plans to request revised assurances on a periodic basis, most likely in concert with the biennial report from TSD facilities. At this time, EPA plans to request the first revision by October 1991. Each time a state enters into a cooperative agreement with EPA to obligate Superfund monies, the state must certify that their current assurance represents current policy to the best of their understanding. EPA will establish a standard certification paragraph on compliance with SARA section 104(k), which will appear on all SARA cooperative agreements for remedial action funding.

## Chapter II—Basic Instructions For Completing The State Capacity Assurance Plan

This chapter provides states with the basic instructions needed to complete their Capacity Assurance Plan (CAP) in accordance with this guidance document. Each chapter in the guidance provides specific instructions for

reporting information to EPA. This chapter outlines the format of the CAP, the technical assistance provided by EPA to complete portions of the CAP, and instructions for transmitting the state's final CAP to EPA.

### Capacity Assurance Plan Format

The state should submit its CAP to EPA as a single document consisting of five Parts, based on the information required in the guidance document:

- Part 1 should contain the results of Chapter III of the Guidance Document, which requests information on current generation, management capacity, imports and exports. This chapter asks each state to demonstrate an understanding of its current hazardous waste generation, treatment, and disposal system, and provides a format for all states to manipulate their data internally and report key information to EPA.
- Part 2 should incorporate the results of Chapter IV of the Guidance Document concerning state waste minimization plans. This Part will provide information on each state's use of waste minimization in the capacity assurance process. States that plan to use waste minimization to help them assure the availability of adequate management capacity must supply more detailed documentation on their ongoing and planned efforts.

- Part 3 should incorporate the results of Chapter V of the Guidance Document, which requires states to project hazardous waste generation and the demand for management capacity. This chapter also requires states to estimate the amount of capacity needed in the state over the next 20 years.

- Part 4 should incorporate the results of Chapter VI of the Guidance Document, which covers state laws and procedures for creating management capacity within the state. All states showing a shortfall in management capacity in Part 3 must describe their plans for addressing this shortfall in this Part.

### Technical Assistance Available From EPA

EPA recognizes an adequate CAP includes a thorough understanding of current generation, management capacity, waste imports, and waste exports. This is the critical information required in Chapter III (Part 1 of the CAP) and used in all subsequent calculations concerning future waste management practices. EPA realizes that developing this information may be difficult for some states because of differences in data collection and management systems. To help states

complete Chapter III of the Guidance Document, and to ensure that all states assemble data into the same format for the CAP, EPA has provided three forms of technical assistance. This assistance is located in a *Technical Reference Manual*, which will be issued by EPA in October, 1988.

The *Technical Reference Manual* will cover the following major topics:

1. Optional conversion methodologies will be detailed to allow the 700 RCRA waste codes to be aggregated into 17 common reporting categories used in the CAP. These conversion methodologies will allow states using the new Biennial Report, the Old Biennial Report (including comparable data obtained from state reports and manifests), and the California UCD codes to convert their waste data into 17 common categories.

2. An optional default methodology will be described to allow states to assign the 17 waste categories to the 15 waste management categories used in the CAP. This default methodology will be based on current waste management practices; states will be free to choose different alternatives and must adjust the default methodology for when used to project future practices.

3. A procedure will be described for converting EPA-supplied data on waste management capacity in your state (by facility ID number) to the 15 waste management categories of the CAP. The facility-by-facility information will be supplied under separate cover and will include information on facility status (on-site, commercial, or captive) and capacity (currently used, currently available, and future plans). States will be required to review, correct, and assemble this information for reporting their capacity needs.

Finally, EPA will be developing computer-based programs to facilitate the calculations described in the *Technical Reference Manual*. The programs will be designed to utilize a common software system and will be made available in the fall of 1988.

Additional technical assistance can be obtained by using the EPA Hotline, which is available during the hours of XX and XX Eastern Standard Time, Monday through Friday. In addition, the EPA Regional Office serving your state has assigned several individuals to answer questions. Please consult the *Technical Reference Manual* for more details, including a list of individuals and phone numbers.

### Executing The Interstate Agreement

Those states that will use out-of-state capacity to meet their waste



management needs at any time over the 20-year assurance timeframe must execute the Interstate Agreement attached to this chapter. The background, intent, and terms of the agreement are explained in Appendix A. Failure to execute this agreement (as appropriate) will result in disapproval of the CAP.

#### *Transmitting The CAP To EPA*

A state's capacity assurance plan should be transmitted to EPA on or before October 17, 1989. Please send XX copies of the CAP to the following address: United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Attn: XXXXXXXX.

#### **INTERSTATE AGREEMENT**

Pursuant to the requirements of Section 104(k)(9) of the Superfund Amendments and Reauthorization Act of 1986, and the Waste Capacity Assurance Guidelines issued by the U.S. Environmental Protection Agency pursuant thereto; and

In recognition of the fact that this state is both an importer and exporter of hazardous waste; and

In accordance with similar agreements on behalf of other state governments respecting interstate transport and disposal of hazardous waste:

The state of \_\_\_\_\_ hereby agrees to the following:

1. The government of this state is aware of the status quo of interstate waste shipments;
2. In accordance with other state agreements, the government of this state agrees to participate in the planning, analysis, and resolution process to address interstate transport and disposal of hazardous waste as outlined in Appendix A of the Waste Capacity Assurance Guidelines issued by the U.S. Environmental Protection Agency; and
3. The government of this state intends to carry out the activities described in the state's Capacity Assurance Plan, which will include programs and/or milestones relevant to waste minimization and the management of hazardous waste.

Nothing in this Agreement shall be construed to affect the existing obligations of the states in a manner that would subject this Agreement to the purview of Clause 3, Section 10, Article I of the United States Constitution.

Governor or Designee

#### **Chapter III—Reporting the Current Status of Generation, Management Capacity, Imports, and Exports**

##### *Purpose*

This chapter asks each state to demonstrate an understanding of its current hazardous waste generation, treatment, and disposal system. It requires a strong technical knowledge of your state's hazardous waste management and tracking information systems, including data needed to meet federal reporting requirements. The key items to be reported are as follows:

- The type and quantity of federally regulated (under RCRA) hazardous waste generated within the state from both continuous industrial processes as well as one-time events, such as "batch" cleanups and RCRA and CERCLA corrective actions.
- The type and quantity of federally regulated hazardous waste shipped out-of-state.
- The type and quantity of federally regulated hazardous waste received from other states.
- The type and quantity of in-state capacity to manage RCRA-regulated hazardous waste and other waste not regulated by the EPA that consumes the state's hazardous waste management capacity, including state-regulated waste and non-hazardous waste.

Much of the information developed in this chapter will serve as a baseline for projecting future waste generation and disposal patterns. For example, information developed on the unused capacity available at in-state facilities will be useful when assessing future capacity needs. Similarly, current patterns of waste imports and exports can be used to project future behavior.

##### *General Instructions*

This chapter provides guidance to states on their responsibilities for reporting information on current waste generation, handling, and disposition. Personnel completing this chapter should consult the separate *Technical Reference Manual* for more detailed instructions on sources of data, data manipulation, and translation of raw data into the reporting formats provided in this chapter.

The following worksheets must be completed to fulfill the minimum requirements of Part I of the CAP:

- Worksheet III-1 summarizing in-state generation of 17 types of RCRA-hazardous waste.
- Worksheet III-2 summarizing in-state waste management capacity.

- Worksheets III-3, III-4, III-5, and III-6 reporting the demands imposed by each of the 17 types of hazardous waste on each of the 15 waste management categories (as applicable) in total and for on-site, off-site captive, and commercial facilities.

- Worksheet III-7 providing detail on waste exports.

- Worksheet III-8 providing detail on waste imports.

States may develop their own report forms (computer-driven reports are satisfactory) but they must follow the general formats of the worksheets listed above. Other worksheets and interim results may be included in the CAP at the discretion of the state unless otherwise noted.

Only RCRA-regulated wastes are to be reported in the Worksheets. If a state compiles figures for state-regulated waste, they should not be reported in the Worksheets submitted as part of the state CAP. Similarly, although a state may wish to track such quantities separately, the waste generated by small quantity generators (less than 1000 kilograms of waste per month) should not be entered into the Worksheets to be submitted in a state's CAP.

The individual or individuals responsible for completing this chapter should be thoroughly familiar with both state and federal hazardous waste reporting systems. In almost all states, these individuals will be part of the state's RCRA program office. However, staff from the state's Superfund office or the equivalent EPA regional Superfund Office must be consulted to obtain information concerning site cleanups.

Technical assistance is available from EPA in several forms. A hotline at the Agency is available during the hours of XX and XX Eastern Standard Time, Monday through Friday. In addition, the EPA regional office serving your state has assigned several individuals to answer questions; names and addresses are provided in the *Technical Reference Manual*. EPA has provided direct technical assistance through regional efforts to coordinate compliance with SARA section 104(k). If states are unaware of these on-going initiatives, they should contact the RCRA coordinators in their regional offices for additional information.

##### *Technical Reference Manual*

The *Technical Reference Manual* that accompanies this guidance is designed to help extract and manipulate raw data from Biennial Reports and similar state sources and produce reports for



inclusion in a state's CAP. It provides four sets of instructions, one of which will be applicable to your state, based on whether your state computerizes the Biennial Report or the equivalent data and whether your state uses the old or new Biennial report forms (or equivalent data).

#### Evaluation Criteria

The Agency plans to judge this document primarily on the accuracy of the data and supporting material used to complete the worksheets. In most cases—unless otherwise noted by the state—EPA expects the waste generation data contained in the worksheets to correspond with information obtained by EPA through its major reporting system, the Biennial Report. The Agency recognizes that differences will exist, however, between the state and federal reporting systems. States showing wide disparity between the amount of waste reported for the CAP and that reported to meet other federal requirements may be asked for more details.

EPA plans to provide individualized state reports with detail on hazardous waste management capacity in that state as reported in the agency's recent *Treatment, Storage, Disposal, and Recycling Survey (TSDR)*. This will allow states to report consistent and relatively accurate baseline information on waste management capacity. Recognizing that some information from the TSDR survey may be up to three years obsolete at the time of the first CAP, states are encouraged to check these data and augment or correct them before presenting them in the CAP. Any corrections should be documented with a simple narrative discussion of changes.

#### Reporting Waste Generation

Most states now report the generation of hazardous waste by EPA waste code. More than 700 waste streams comprise EPA's list of regulated industrial residuals. Two states—California and Washington—report waste flows using a more aggregated set of waste codes developed at the University of California, Davis (these comprise the so-called UCD codes). For purposes of capacity assurance, all waste streams are to be grouped into 17 SARA waste types, which provide sufficient information for assignment to management methods.

Tables XX, XX, and XX of the *Technical Reference Manual* provide conversion factors to aggregate the EPA and UCD waste codes into this new waste type system. These tables match waste streams in either the EPA or UCD

categories to the capacity assurance waste streams on the basis of waste phase (liquid, sludge, or solid) and major constituent (organic components, metals, halogenated compounds). Several miscellaneous categories convert directly.

States using the new 1987 Biennial Report forms should use appropriate tables and procedures described in the *Technical Reference Manual* to transfer EPA waste codes into their 17-waste type equivalent. This method uses the data on waste stream characteristics in conjunction with the designated EPA waste code to create a relatively precise mapping procedure.

States using the old Biennial Report forms should use a different set of tables and procedures presented in the *Technical Reference Manual* to convert EPA waste codes into the 17 SARA waste types. These conversions are generally considered less precise because less is known about waste stream characteristics. Where necessary, the procedures use a national profile of waste characteristics to facilitate the conversion.

Table XX of the *Technical Reference Manual* maps UCD waste codes into the capacity assurance waste streams based on waste phase and major constituent.

#### Waste Streams To Be Reported

States should report only RCRA-regulated waste in the worksheets that present waste generation. States need not report the following when describing waste generation: waste volumes that are regulated only by state law; wastes generated and handled through exempt onsite NPDES processes; exempt onsite in-process recycling (closed loop); exempt onsite treatment and discharge to municipal treatment works; direct discharge to publicly owned treatment works without treatment; and exempt onsite recycling through stills. For planning purposes, states may wish to account for these or other types of regulated waste, but they should include such wastes in separate forms from those used to report RCRA-only regulated waste.

#### Sources of Data To Report Waste Generation

For purposes of the 1989 assurance, all states should use the 1987 Biennial Report or the equivalent data elements collected in state reports to estimate 1987 calendar year generation of these 17 waste types. While availability will vary from state-to-state, equivalent sources of data include state surveys of generators, waste management facility inventories, state-modified biennial report forms, or waste manifest reports.

#### Establishing A Base Year

The EPA requests that states use 1987 as the base year to report waste generation. However, if a state has more accurate data for 1985 or 1986 and feels that these data more precisely represent waste generation in their state (because, for example, the state spent considerable resources to collect and analyze that data), they should present these figures and identify the alternate base year. States that choose an alternate base year need not estimate waste generation in 1987.

#### Units To Report Waste Generation

All waste quantities should be reported in tons per year. Waste expressed in volumetric terms, such as gallons, should be multiplied by the density of the waste in question (tons per gallon, for example) to yield the most accurate conversion into tons. Those states using the new Biennial Report forms will find density information for each waste stream in form GM of Package B, Section III, Question D. In the absence of exact density characteristics, states may use the information presented in the *Technical Reference Manual* (Table XX, based on the density of water) to convert from volume into tons. Table XX also provides several common mass-to-mass conversion factors.

#### Instructions For All Worksheets

A prototype state hazardous waste generation and handling system is depicted in Figure III-1. States should quantify the waste flows, for each of the 17 capacity assurance waste types, for each of the boxes presented in Figure III-1. Waste quantities should be reported in the worksheets noted below the boxes on the figure. On-site handling, for example, should be reported in Worksheet III-4; all exports should be summarized in Worksheet III-7. Each worksheet is introduced in a general sense in this chapter. The *Technical Reference Manual* describes procedures to complete each worksheet from raw data.

The *Technical Reference Manual* is divided into four sections, based on whether a state computerizes Biennial Report data or not and whether a state is using the old or new Biennial Report forms for the 1987 reporting cycle. States with computerized processing of new Biennial Report data should consult Chapter 1 of the *Technical Reference Manual*. These states will be directed to ensure that their Biennial Report data are arranged in a standard format, consistent with the specifications of the Biennial Report Data System. Once so



arranged, these states can access EPA-provided software that automatically generates all of the required worksheets in their proper formats. Because of the richness of the data collected under the new reporting system, EPA's capacity assurance software will enable states to complete many optional analyses (consult the *Technical Reference Manual* for details).

States with computerized old Biennial Report data should consult Chapter 2 of the *Technical Reference Manual*. They will be directed to follow a similar computer-driven procedure to complete the Worksheets III-1 through III-8. Because the data are generally more limited in the old Biennial Reporting system, fewer optional analyses will be available.

States with manual processing of new Biennial Report data should consult Chapter 3 of the *Technical Reference Manual*. Simplified procedures will be presented to work directly from the Biennial report forms themselves. These states face perhaps the most time consuming task in completing the current generation and handling worksheets.

States that process old Biennial Report data manually should consult Chapter 4 of the *Technical Reference Manual*. A similar set of simplified procedures will help states make the linkage between raw data and the completed worksheets.

States for which Biennial Report data collection and processing is handled by the appropriate EPA regional office should contact the regional EPA Biennial Report coordinator to determine the applicable set of instructions to follow.

For each of the four sets of the instructions, the *Technical Reference Manual* describes methods to ensure that all states (except as noted below) are able to complete the following types of data manipulations:

- Translating Biennial Report waste codes into 17 waste types;
- Translating UCD waste codes into 17 waste types;
- Translating TSDR Survey and Biennial Report waste management codes to 15 management categories;
- Matching SARA waste types to SARA management categories based either on a national profile or new Biennial report data;
- Separating one-time waste generation from recurrent generation based on new Biennial Report data;
- Presenting both old and new Biennial Report data in the formats specified in Worksheets III-1 through III-8;

- Sorting of exported waste by waste type;
- Sorting of exported waste by management category;
- Summarizing imported waste by state of origin and management category; and
- Summarizing exported waste quantities by type of waste and state receiving waste.

In addition to these manipulations, the *Technical Reference Manual* provides flow diagrams describing the logic used to abstract data from both the old and new Biennial Report and report waste quantities as (1) generated and managed onsite, (2) generated onsite and managed offsite, or (3) imported for management in state.

#### Instructions For Worksheet III-1

Worksheet III-1 asks states to summarize total in-state generation of RCRA-regulated waste. Total generation is comprised of primary generation (waste by-products of manufacturing processes) and secondary generation (waste by-products of waste treatment processes). While states need not draw this distinction in the worksheet, states accessing EPA's capacity assurance software will be able to generate a separate worksheet for each component.

Worksheet III-1 also asks states to separate total generation into recurrent and one-time waste quantities. Recurrent wastes include both primary and secondary streams attributable to on-going industrial activity. One-time wastes include those that result from isolated events such as equipment cleaning or decommissioning, site cleanup, or off-spec product disposal. Only states using the new Biennial Report forms will be able to separate recurrent from one-time waste generation. States using the old Biennial Report forms, which do not directly support such an analysis, should estimate one-time generation to the best of their ability, following directly support such an analysis should estimate one-time generation to the best of their ability, following instructions in the *Technical Reference Manual*. The *Technical Reference Manual* presents both computerized and manual procedures to assist in this separation.

#### Instructions for Worksheet III-2

Worksheet III-2 asks states to summarize the waste handling capacity currently available in their state. EPA will supply all the necessary figures to complete this worksheet for the 1989 CAP. Because the basis for EPA's data, however, are the results of the 1986 National TSDR Survey, some capacity figures may be obsolete. It is the state's

responsibility to determine whether data supplies by EPA are appropriate for use in the CAP. Therefore, states should use their own capacity figures if they represent a more complete assessment of capacity than the EPA data. States should briefly explain in footnotes to the appropriate worksheets any differences between more recent capacity data and those supplied by EPA.

In subsequent years, states will be responsible for collecting all capacity data is part of their normal biennial reporting requirements.

#### Instructions For Worksheets III-3 Through III-6

Together, Worksheets III-3 through III-6 constitute the core data describing a state's current hazardous waste management system. In these four worksheets, states are asked to link waste generation to demand for in-state waste management capacity. Waste exports and the effect of waste imports also must be shown, and four types of management capacity must be examined: Total in-state; in-state, on-site, in-state, captive; and in-state commercial. Completing these worksheets requires numerous data transactions; states should consult the *Technical Reference Manual* for detailed instructions on their completion.

For convenience, Worksheet III-3 through III-6 also present a separate capacity block to display current and planned future capacity figures. For the 1989 CAP, all capacity data will be supplied by the EPA in individual state reports. Thereafter, states will be expected to collect these data as part of the normal biennial reporting process.

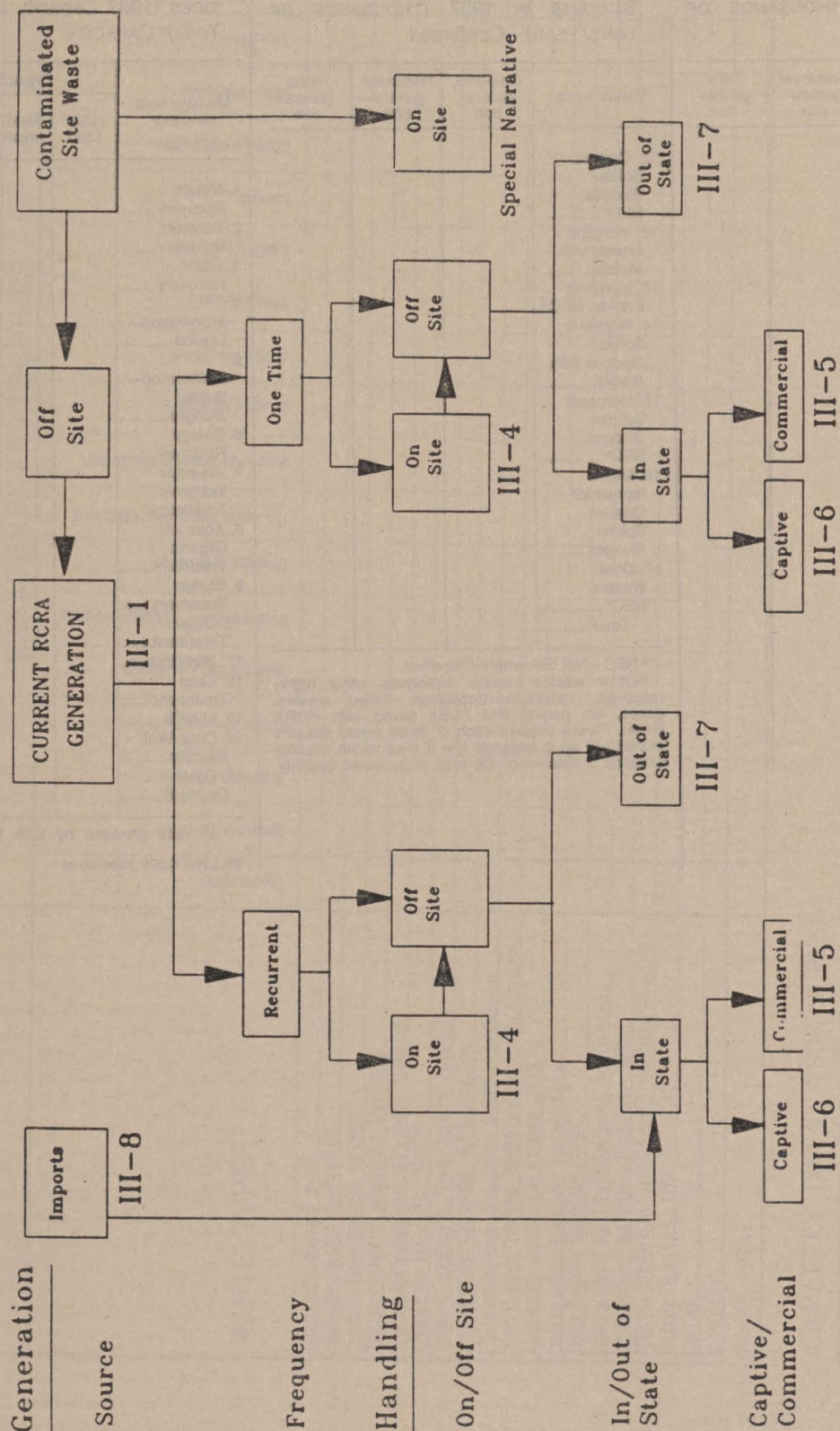
The "exports" column on these worksheets summarizes waste residuals generated as a by-product of waste management processes and exported for further management at out-of-state facilities.

#### Instructions For Worksheets III-7 and III-8

Worksheet III-7 and III-8 ask states to provide additional detail on their waste exports and imports, respectively. Both old and new Biennial Reports support the presentation of exported waste quantities by waste type and receiving state. Similarly, both reports support the presentation of waste import quantities by waste type and state of origin. All states should consult the *Technical Reference Manual* for details on procedures to complete these worksheets.



Figure III-1. Prototypical State Waste Management System





WORKSHEET III-1.—SUMMARY OF IN-STATE GENERATION OF WASTE STREAMS IN 1987 (THOUSANDS OF TONS/YEAR)

Waste types	One-time generation	Recurrent generation	Total generation
1. Contaminated Soil .....			
2. Halogenated Solvents .....			
3. Nonhalogenated Solvents .....			
4. Halogenated Organic Liquids .....			
5. Nonhalogenated Organic Liquids .....			
6. Organic Liquids, NEC <sup>a</sup> ..			
7. Mixed Organic/Inorganic Liquids .....			
8. Inorganic Liquids with Organics .....			
9. Halogenated Organic Solids/Sludges .....			
10. Nonhalogenated Organic Solids/Sludges .....			

WORKSHEET III-1.—SUMMARY OF IN-STATE GENERATION OF WASTE STREAMS IN 1987 (THOUSANDS OF TONS/YEAR)—Continued

Waste types	One-time generation	Recurrent generation	Total generation
11. Organic Solids/Sludges, NEC <sup>a</sup> .....			
12. Inorganic Liquids with Metals .....			
13. Inorganic Liquids, NEC <sup>a</sup> ..			
14. Inorganic Solids/Sludges with Metals .....			
15. Inorganic Solids/Sludges, NEC <sup>a</sup> .....			
16. Mixed Inorganic/Organic Solids/Sludges .....			
17. Other Wastes, NEC <sup>a</sup> .....			
Total .....			

<sup>a</sup> NEC=Not Elsewhere Classified.

<sup>b</sup> Other wastes include explosives, other highly reactives, radioactive/hazardous mixed wastes, gases, lab packs, and PCBs mixed with RCRA waste. Please present each of these waste streams individually on a separate line if their waste quantity exceeds 5 percent of the total state waste quantity.

WORKSHEET III-2.—SUMMARY OF IN-STATE WASTE MANAGEMENT PRACTICES (1987 Capacity in Thousands of Tons)<sup>a</sup> CAPACITY

Management category	Capacity			Remaining capacity after 1987
	Utilized	Maximum	Available	
1. Metals Recovery .....				
2. Solvents Recovery .....				
3. Other Recovery .....				
4. Incineration—Liquids .....				
5. Incineration—Solids/Sludges .....				
6. Energy Recovery .....				
7. Aqueous Inorganic Treatment .....				
8. Aqueous Organic Treatment .....				
9. Sludge Treatment .....				
10. Other Treatment .....				
11. Stabilization ..				
12. Land Treatment .....				
13. Landfill .....				
14. Deep-Well Injection .....				
15. Other Disposal .....				

<sup>a</sup> All data provided by EPA for the 1989 CAP.

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# Worksheet III-3: Summary of All In-State Waste Management Activities in 1987

WASTE TYPES	MANAGEMENT CATEGORIES																	
	Generation	Metals recovery	Solvents recovery	Other recovery	Incineration -- Liquids	Incineration -- Sludges/Solids	Energy recovery	Aqueous inorganic treatment	Aqueous organic treatment	Sludge treatment	Other treatment	Stabilization	Land treatment	Landfill	Deep-well injection	Other disposal	Exports	TOTAL
Contaminated soil																		
Halogenated solvents																		
Nonhalogenated solvents																		
Halogenated organic liquids																		
Nonhalogenated organic liquids																		
Organic liquids, NECA																		
Mixed organic/inorganic liquids																		
Inorganic liquids w/organics																		
Halogenated organic solids/sludges																		
Nonhalogenated organic solids/sludges																		
Organic solids/sludges, NEC																		
Inorganic liquids w/metals																		
Inorganic liquids, NEC																		
Inorganic solids/sludges w/metals																		
Inorganic solids/sludges, NEC																		
Mixed organic/inorganic solids/sludges																		
Other wastes, NEC b																		
TOTAL																		
Imports																		
GRAND TOTAL																		

## CAPACITY DATA - TSDR SURVEY

Utilization 1985																		
Available 1986																		
Future available 1989																		

a) Not Elsewhere Classified

b) Including explosives, other highly reactives, radioactive/hazardous mixed, gases, lab packs, &amp; PCBs mixed with RCRA wastes.



## Worksheet III-4:

## In-State, On-Site Waste Management Activities in 1987

WASTE TYPES	MANAGEMENT CATEGORIES													
	Generation	Metals recovery	Solvents recovery	Other recovery	Incineration -- Liquids	Incineration -- Sludges/Solids	Energy recovery	Aqueous inorganic treatment	Aqueous organic treatment	Sludge treatment	Other treatment	Stabilization	Land treatment	Landfill
TOTAL														
Exports														
Other disposal														
Deep-well injection														
Landfill														
Land treatment														
Stabilization														
Other treatment														
Sludge treatment														
Aqueous organic treatment														
Aqueous inorganic treatment														
Energy recovery														
Incineration -- Sludges/Solids														
Incineration -- Liquids														
Other recovery														
Solvents recovery														
Metals recovery														
Generation														
GRAND TOTAL														

## CAPACITY DATA - TSDR SURVEY

Utilization 1985														
Available 1986														
Future available 1989														

a) Not Elsewhere Classified

b) Including explosives, other highly reactives, radioactive/hazardous mixed, gases, lab packs, &amp; PCBs mixed with RCRA wastes.



## Worksheet III-5:

## In-State, Captive Waste Management Activities in 1987

WASTE TYPES	MANAGEMENT CATEGORIES													
	Generation	Metals recovery	Solvents recovery	Other recovery	Incineration - Liquids	Incineration - Sludges/Solids	Energy recovery	Aqueous inorganic treatment	Aqueous organic treatment	Sludge treatment	Other treatment	Stabilization	Land treatment	Landfill
TOTAL														
Exports														
Other disposal														
Deep-well injection														
Contaminated soil														
Halogenated solvents														
Nonhalogenated solvents														
Halogenated organic liquids														
Nonhalogenated organic liquids														
Organic liquids, NEC <sup>a</sup>														
Mixed organic/inorganic liquids														
Inorganic liquids w/organics														
Halogenated organic solids/sludges														
Nonhalogenated organic solids/sludges														
Organic solids/sludges, NEC														
Inorganic liquids w/metals														
Inorganic liquids, NEC														
Inorganic solids/sludges w/metals														
Inorganic solids/sludges, NEC														
Mixed organic/inorganic solids/sludges														
Other wastes, NEC <sup>b</sup>														
TOTAL														
Imports														
GRAND TOTAL														

## CAPACITY DATA - TSDR SURVEY

Utilization 1985														
Available 1986														
Future available 1989														

a) Not Elsewhere Classified

b) Including explosives, other highly reactives, radioactive/hazardous mixed gases, lab packs, &amp; PCBs mixed with RCRA wastes.



# Worksheet III-6: In-State, Commercial Waste Management Activities in 1987

WASTE TYPES	MANAGEMENT CATEGORIES																	
	Generation	Metals recovery	Solvents recovery	Other recovery	Incineration — Liquids	Incineration — Sludges/Solids	Energy recovery	Aqueous inorganic treatment	Aqueous organic treatment	Sludge treatment	Other treatment	Stabilization	Land treatment	Landfill	Deep-well injection	Other disposal	Exports	TOTAL
Contaminated soil																		
Halogenated solvents																		
Nonhalogenated solvents																		
Halogenated organic liquids																		
Nonhalogenated organic liquids																		
Organic liquids, NECA																		
Mixed organic/inorganic liquids																		
Inorganic liquids w/organics																		
Halogenated organic solids/sludges																		
Nonhalogenated organic solids/sludges																		
Organic solids/sludges, NEC																		
Inorganic liquids w/metals																		
Inorganic liquids, NEC																		
Inorganic solids/sludges w/metals																		
Inorganic solids/sludges, NEC																		
Mixed organic/inorganic solids/sludges																		
Other wastes, NEC b																		
TOTAL																		
Imports																		
GRAND TOTAL																		

## CAPACITY DATA - TSDR SURVEY

Utilization 1985																	
Available 1986																	
Future available 1989																	

a) Not Elsewhere Classified

b) Including explosives, other highly reactives, radioactive/hazardous mixed, gases, lab packs, &amp; PCBs mixed with RCRA wastes.

BILLING CODE 6560-50-C



**WORKSHEET III-7.—SUMMARY OF EXPORTED WASTE QUANTITIES IN 1987 BY WASTE TYPE AND RECEIVING STATE (IN THOUSANDS OF TONS)**

Waste types	Receiving State (List each relevant State)
1. Contaminated Soil	
2. Halogenated Solvents	
3. Nonhalogenated Solvents	
4. Halogenated Organic Liquids	
5. Nonhalogenated Organic Liquids	
6. Organic Liquids, NEC*	
7. Mixed Organic/Inorganic Liquids	
8. Inorganic Liquids with Organics	
9. Halogenated Organic Solids/Sludges	
10. Nonhalogenated Organic Solids/Sludges	
11. Organic Solids/Sludges NEC*	
12. Inorganic Liquids with Metals	
13. Inorganic Liquids, NEC*	
14. Inorganic Solids/Sludges with Metals	
15. Inorganic Solids/Sludges, NEC*	
16. Mixed Inorganic/Organic Solids/Sludges	
17. Other Wastes, NEC*	

\* NEC = Not Elsewhere Classified.  
 \* Other wastes include explosives, other highly reactives, radioactive/hazardous mixed wastes, gases, lab packs, and PCBs mixed with RCRA waste. Please present each of these waste streams individually on a separate line if their waste quantity exceeds 5 percent of the total state waste quantity.

**WORKSHEET III-8.—SUMMARY OF IMPORTED WASTE QUANTITIES IN 1987 BY MANAGEMENT CATEGORY AND STATE OF ORIGIN (IN THOUSANDS OF TONS)**

State of origin	Tons utilized	Waste Management Category (List all relevant categories)

**Definitions Section**

**Available Capacity.** The amount of waste which a treatment, storage, disposal, or recovery facility determines it can process within a single reporting year, or the amount allowed by all relevant EPA permits, whichever is less.

**Captive Management Facility.** Any treatment, storage, disposal, or recovery unit, process, or operation that is used exclusively to manage the waste produced by another operating unit or

units under the same ownership of any facility from which it receives waste.

**Commercial Management Facility.** Any hazardous waste treatment, storage, disposal, or recovery unit, process, or operation that is generally available to manage the waste of other facilities and is not under the ownership of any facility from which it receives waste.

**Equivalent State Data.** This phrase refers to common state data, derived from official surveys or manifests, that use the RCRA waste codes to report generation and capacity information. This data is similar to that collected under the old Biennial Report.

**Future Available Capacity.** The amount of waste a treatment, storage, disposal, or recovery facility determines it can process within a prescribed time period.

**New Biennial Report.** This refers to the revised EPA reporting system, issued for the 1987 reporting cycle. States may choose whether or not to use the new Biennial Report. New information required by the 1987 Biennial Report include data on waste stream constituents, details on a state's waste minimization activities, and facility capacity information.

**Old Biennial Report.** This refers to the current official EPA reporting system, last used by all states in 1985. Data requested from the states included quantities of waste generated and amounts of waste treated, stored, or disposed. The same data are still required for the 1987 reporting cycle as minimum requirements.

**On-site Management.** Any hazardous waste not transferred from the site of its generation for treatment, storage, or disposal. By definition, such facilities are captive.

**Utilized Capacity.** The actual amount of waste managed by a treatment, storage, disposal, or recovery system within a single year.

**Chapter IV—State Waste Minimization Plans**

**Purpose**

The purpose of this chapter is to obtain information on each state's use of waste minimization in the capacity assurance process. (For the CAP definition of waste minimization see the Definitions Section at the end of the Chapter.) While the Agency believes a waste minimization program is a key step toward sound hazardous waste management, EPA recognizes that some states may choose to assure adequate capacity without claiming waste reduction benefits. These states must supply only brief information on their

ongoing or planned waste minimization efforts. Such information will be evaluated for completeness only; EPA will not evaluate the waste minimization programs of these states.

States that plan to use waste minimization to help them assure the availability of adequate management capacity must supply documentation on their ongoing and planned efforts. These states must describe the overall strategy of their programs, how they plan to account for waste minimization in their waste generation projections, and how these programs might affect waste generation for the projection years.

**General Instructions**

To complete the requirements of this chapter, states should respond to the questions contained in the attached forms. States should copy and complete the appropriate forms and include them—along with additional documentation—in their CAP. Not all forms must be completed.

States not using waste minimization programs to reduce capacity demand must complete the following form:

**Form I: Legislative Authority.** This form requests information on the present legislative authority for a waste minimization program, its general make up, funding, staffing, and any anticipated legislative or programmatic changes.

States that anticipate using waste minimization programs to reduce capacity demand must complete Form I and the following forms:

**Form II: Waste Minimization Reduction Estimates.** This form requests detailed information on the state's anticipated effect of state and industrial waste minimization efforts, technical basis of these estimates, and measures of effectiveness.

**Form III: Program Components Descriptions.** This form requests more detailed information on the individual components that comprise the state's waste minimization program.

The information requested in Forms II and III will enable the EPA to assess the reasonableness of the state's proposed goals and activities and to monitor the progress of the state's programs.

A glossary of the terms used to describe the waste minimization program components is contained in the Definitions Section at the end of the chapter. In addition, technical assistance is available from EPA in several forms. A Hotline at the Agency is available during the hours of XX and XX Eastern Standard Time, Monday through Friday. In addition, the EPA Regional Office serving your state has



assigned several individuals to answer questions. Please consult the *Technical Reference Manual* for more details, including a list of individuals and phone numbers.

#### Evaluation Criteria

EPA plans to evaluate each state's waste minimization plan differently. For states not choosing to incorporate any waste minimization estimates into projections of capacity need, the Agency will simply review the state's submittal for accuracy and completeness. In these cases, the Agency will make no judgment on the adequacy of the particular waste minimization program operated by the state, if any such program is operating or planned.

For states that rely on waste minimization to reduce the demand for waste treatment capacity, the Agency must conduct a more detailed evaluation. For these states, the following must be demonstrated in the CAP:

- The estimated reductions in waste are based on a sound technical evaluation of the potential effects of waste minimization in your state. This does not require a technical analysis of waste minimization potential but an examination from available information to determine how it might apply to your state.
- The resources committed to implementing the waste minimization strategy are consistent with the plan set forth by the states; and,
- The activities for projected accomplishments in waste minimization are reasonable and there is a plan to implement these activities.

#### Form I: Legislative Authority

All states must fill out this form. States should copy and complete the form and include it—along with additional documentation—in Part 2 of their CAP. Please attach additional information if more space is needed to answer any question.

Name of Respondent \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
Address \_\_\_\_\_

1. Does legislative authority exist to implement a waste minimization program in your state? If authority exists through general broad authority, please answer yes and site the authority if known.

—Yes —No?

1a. If yes, what are the titles of the legislation and when was it enacted?

1b. Is future legislation anticipated and when does the state plan to have it enacted?

2. Indicate which of the following waste minimization program components are specifically in use or authorized in your state:

In use	Authorized	
_____	_____	Technical Assistance
_____	_____	Economic Incentives
_____	_____	Waste Exchange
_____	_____	Research and Development
_____	_____	Regulatory Requirements
_____	_____	Education
_____	_____	All programs are authorized under a broad legislative enactment
_____	_____	Other:

3. In your state, are there any pending statutes, or regulations relating to waste minimization that are expected to be enacted within the next two years?

—Yes —No?

3a. Please briefly describe the anticipated changes and their expected impacts on waste minimization in your state.

4. What administrative agency or agencies implement your state's waste minimization program (list all applicable agencies and the waste minimization component they are responsible for).

Agency \_\_\_\_\_

Component \_\_\_\_\_

5. What is the amount of funding received from the following sources (in thousands of dollars) for your waste minimization program?

- General revenues
- Dedicated taxes (e.g., waste end, feedstock)
- Tipping fees
- Federal Grants
- Other

6. Please estimate the number of person-years of staff supported by the state working on waste minimization.

- State professionals on staff
- Consultants
- Other

7. Do you plan to show any effect on future waste management capacity demand from waste minimization activities in your state?

—Yes —No?

If Yes Proceed to Form II, Waste Minimization Reduction Estimates.

If No Stop Here

The Waste Minimization Portion of the Capacity Assurance Submittal is Completed.

#### Form II. Waste Minimization Reduction Estimates

Only those states that anticipate incorporating waste minimization estimates in their capacity projections must complete this form. States should copy and complete the form and include it—along with additional documentation—in Part 2 of their CAP/Please attach additional information if

more space is needed to answer any question.

Name of Respondent \_\_\_\_\_  
Telephone number \_\_\_\_\_  
Address \_\_\_\_\_

1. Please estimate, using Worksheet IV-1, the amount of waste expected to be reduced (in tons or percent reduction) by waste minimization for each of the 17 waste types of Chapter III for projection years 1989, 1995, and 2009. These estimates should illustrate how you plan to incorporate waste minimization into your waste projection of Chapter V. They should not include anticipated changes in production rates, but should show only those reductions based on waste minimization efforts.

2. Please briefly describe the basis of your technical estimates. A list of bibliographic references and a short narrative describing how they were used in sufficient. Examples of appropriate material that might be used to develop waste minimization estimates include:

- State surveys of waste generation trends.
- Waste minimization plans prepared by industry in your state (Please describe or include these plans).
- Reports from Advisory Councils on the potential effect of waste minimization for the state.
- Reports from Federal Agencies and Trade and Technical Associations estimating trends in waste minimization applicable to the industries in your state.
- Engineering studies and analysis of potential waste stream changes applicable to industries in your state.
- Programs conducted by non-state agencies such as non-profit organizations that affect the industries in your state.

3. How do you intend to measure the effectiveness of your Waste Minimization Program? (In addition to the information provided in the Biennial Report, indicate which of the following do you plan to evaluate to determine the effectiveness of your waste minimization program.)

- No other measures besides that obtained from EPA's biennial report
- Number of information requests handled
- Number of industries/plants participating

- Savings to industry (cost ratios)
- Change in waste quantity generated
- Change in ratios of waste generated per unit product
- Other

4. How will you acquire this information?

- By examining waste minimization program records
- By conducting industry surveys
- New EPA Biennial Report
- By examining state regulatory files
- Other

5. Briefly describe your communication strategy with the industrial community.



6. In addition to your waste reduction estimates, are there any other activities in your state (announced programs by one or more key industries to reduce waste pending legislation or regulations component implementation schedule) that might be useful in evaluating your waste minimization program?

Date	Activity

If You Have Shown Waste Reduction Estimates Based on the Effects of Your Waste Minimization Program, Proceed to Form III, Program component descriptions.

### Form III: Program Component Descriptions

Only those states that anticipate incorporating waste minimization estimates in their capacity projections and have indicated employing individual waste minimization components in Form I Question 2 must complete this form. This section requests information on the specific components of your waste minimization program. Please complete the sections that are applicable to your state program. Questions on different waste minimization components are presented separately so that they may be distributed to different program officials if necessary. States should copy and complete the form and include it—along with additional documentation—in Part 2 of their CAP. Please attach additional information if more space is needed to answer any question.

Form III includes the following:

- III-a Technical Assistance
- III-b Economic Incentives
- III-c Waste Exchange
- III-d Research and Development
- III-e Regulatory Requirements
- III-f Education

Respondents to each set of questions in this form should attach their name and telephone number should additional information be necessary.

Name of Respondent \_\_\_\_\_  
Telephone number \_\_\_\_\_  
Address \_\_\_\_\_

1. Please indicate the approximate emphasis that your state places on the following waste minimization components as a percent of your waste minimization budget.

Component	Approximate percent of budget
Technical Assistance .....	_____
Economic Incentives.....	_____
Waste Exchange.....	_____
Research and Development.....	_____
Regulatory Requirements.....	_____
Education.....	_____
Other.....	_____
Total.....	100%

### III-a Technical Assistance

1. Indicate which of the following Technical Assistance components are currently in use or proposed for use in your waste minimization program.

#### Technical Assistance

On-going	Proposed	
_____	_____	On-site assistance
_____	_____	Information clearinghouse/ Library
_____	_____	Technical workshops
_____	_____	Feasibility studies
_____	_____	Other:

2. For Technical Assistance, please provide the following information for existing programs or proposed programs:

2a. Describe the specific target of the Technical Assistance program (e.g., waste streams, industry categories, or both).

2b. Why did you choose to implement this program?

2c. What problems to implementing the Technical-Assistance program do you anticipate or have you experienced?

### III-b Economic Incentives

1. Indicate which of the following Economic Incentives components are currently in use or proposed for use in your waste minimization program.

#### Economic Incentives

On-going	Proposed	
_____	_____	Awards/matching grants
_____	_____	Taxes/Fees (e.g., waste-end, front-end, point-of-use)
_____	_____	Low-interest loans
_____	_____	Tax credits
_____	_____	Other:

2. For Economic Incentives, please provide the following information for existing or proposed programs:

2a. Indicate the number of grants provided in the base year as part of this component.

2b. What is the current (or projected) annual budget for grants provided in your waste minimization program as part of Economic Incentives (in thousands of dollars)?

2c. Describe the specific target of the Economic Incentives program (e.g., waste streams, industry categories, or both).

2d. Why did you choose to implement this program?

2e. What problems to implementing the Economic Incentives program do you anticipate or have you experienced?

### III-c Waste Exchange

1. Indicate which of the following Waste Exchange components are currently in use or proposed for use in your waste minimization program.

Waste Exchange		
On-going	Proposed	
_____	_____	State-promoted
_____	_____	State-managed
_____	_____	State-financed
_____	_____	Regional or multi-state effort
_____	_____	Other:

2. For Waste Exchange, please provide the following information for existing programs or proposed programs:

2a. What is the current (or projected) annual contribution to the Waste Exchange (in thousands of dollars) that you participate in?

2b. What is the name of the Waste Exchange that you participate in?

2c. Which states participate in this Waste Exchange (Please list)?

2d. Describe the specific target of the Waste Exchange program (e.g., waste streams, industry categories, or both).

2e. Why did you choose to implement this program?

2f. What problems to implementing the Waste Exchange program do you anticipate or have you experienced?

### III-d Research and Development

1. Indicate, which of the following Research and Development components are currently in use or proposed for use in your waste minimization program.

Research and Development		
On-going	Proposed	
_____	_____	Options development/ feasibility studies
_____	_____	Pilot scale or demonstration projects
_____	_____	Economic or policy analysis
_____	_____	Manuals for audits or technology implementation
_____	_____	Other:

2. For Research and Development, please provide the following information for existing programs or proposed programs:



2a. What is the current (or projected) annual budget for Research and Development (in thousands of dollars)?

2b. Describe the specific target of the Research and Development program (e.g., waste streams, industry categories, or both).

2c. Why did you choose to implement this program?

2d. What problems to implementing the Research and Development program do you anticipate or have you experienced?

### III-e Regulatory Requirements

1. Indicate, which of the following Regulatory Requirement components are currently in use or proposed for use in your waste minimization program.

#### Regulatory Requirements

On-going Proposed

Reporting requirements  
Reduction standards  
Design or operating standards (e.g., required chemical substitutions)  
Management standards (e.g., mandatory waste reduction audits, listing on waste exchanges)  
Other:

2. For Regulatory Requirements, please provide the following information for existing programs or proposed programs:

2a. Describe the specific target of the Regulatory Requirements program (e.g., waste streams, industry categories, or both).

2b. Why did you choose to implement this program?

2c. What problems to implementing the Regulatory Requirements program do you anticipate or have you experienced?

### III-f Education

1. Indicate, which of the following Education components are currently in use or proposed for use in your waste minimization program.

#### Education

On-going Proposed

Governor's or other award programs  
Public education (e.g., seminars, workshops, pamphlets)  
Outreach  
Other:

2. For Education, please provide the following information for existing programs or proposed programs:

2a. Describe the specific target of the Education program (e.g., waste streams, industry categories, or both).

2b. Why did you choose to implement this program?

2c. What problems to implementing the Education program do you anticipate or have you experienced?

### WORKSHEET IV-1.—ESTIMATE REDUCTIONS (IN TONS OR PERCENT REDUCTION)

Waste types	Projection years		
	1989	1995	2009
1. Contaminated Soil			
2. Halogenated Solvents			
3. Nonhalogenated Solvents			
4. Halogenated Organic Liquids			
5. Nonhalogenated Organic Liquids			
6. Organic Liquids, NEC <sup>a</sup>			
7. Mixed Organic/Inorganic Liquids with Organics			
8. Halogenated Organic Solids/Sludges			
9. Nonhalogenated Organic Solids/Sludges			
10. Organic Solids/Sludges NEC <sup>a</sup>			
11. Inorganic Liquids with Metals			
12. Inorganic Liquids, NEC <sup>a</sup>			
13. Inorganic Solids/Sludges with Metals			
14. Inorganic Solids/Sludges, NEC <sup>a</sup>			
15. Mixed Inorganic/Organic Solids/Sludges			
16. Other Wastes, NEC <sup>b</sup>			
Total			

<sup>a</sup> NEC = Not Elsewhere Classified.

<sup>b</sup> Other wastes include explosives, other highly reactive, radioactive/hazardous mixed wastes, gases, lab packs, and PCBs mixed with RCRA waste. Please present each of these waste streams individually on a separate line if their waste quantity exceeds 5 percent of the total state waste quantity.

### Definitions Section

#### Definition of Waste Minimization

**Waste minimization.** The reduction, to the extent feasible, of hazardous waste that is generated or subsequently treated, stored, or disposed. Waste minimization includes any source reduction or recycling activity

undertaken by a generator that results in: (1) the reduction of total volume or quantity of hazardous waste; (2) the reduction of toxicity of hazardous waste; or (3) both, as long as the reduction is consistent with the goal of minimizing present and future threats to human health and the environment.

**Source reduction.** The reduction or elimination of waste at the source, usually within a process. Source reduction measures include process modifications, feedstock substitutions, improvements in feedstock purity, housekeeping and management practices, increases in the efficiency of machinery, and recycling within a process. Source reduction implies any action that reduces the amount of waste exiting from a process.

**Recycling.** The use or reuse of a waste as an effective substitute for a commercial product, or as an ingredient or feedstock in an industrial process. It also refers to the reclamation of useful constituent fractions within a waste material or removal of contaminants from a waste to allow it to be reused. As used in this report, recycling implies use, reuse, or reclamation of a waste either on site or off site after it is generated by a particular process.

### Characterization of Waste Minimization Terms

#### Technical Assistance

**On-Site Assistance.** Comprehensive technical assistance to aid industry in reducing the volume or toxicity of wastes generated. May include consultation on industrial and waste management practices and waste minimization options.

**Information Clearinghouse/Library.** A data base (electronic or hardcopy) made available to managers involved in waste minimization. Clearinghouses provide access to documents, references, and telephone assistance.

**Technical Workshops.** Information dissemination programs designed to keep industry and the community up-to-date on programs, technology, waste minimization activities and appropriate regulatory information.

**Feasibility Studies.** Technical assistance, provided off-site, consisting of process analysis and engineering study utilizing general knowledge. May be based on information gathered from similar industries or previous on-site technical assistance. Project results are usually applicable to assist in solving select ranges of manufacturing or institutional problems.



### Economic Incentives

**Awards/Matching Grants.** Direct payments from the state to hazardous waste generators or others engaged in waste minimization activities. May be structured to encourage various types of waste minimization activities, to assist specific types of firms, or to focus on particular waste streams.

**Taxes/Fees.** A means by which states create an economic incentive for waste minimization. Front-end taxes can be imposed at or near the beginning of commercial chain of production, throughout the distribution network, and at the point of consumption of selected chemicals and substances. Waste-end taxes may be levied on the generation, transportation, storage, treatment, or disposal of wastes.

**Low-Interest Loans.** Financial assistance that enables firms to reduce the cost of financing investments in processes and technologies that reduce wastes. Usually directed to both small and mid-sized hazardous waste generators who may be unable to obtain commercial credit at an affordable price.

**Tax-Credits.** A direct reduction in the tax liability of the firm, generally rewarding only capital investments.

### Waste Exchanges

Waste generated by one company are provided or sold to another company that can use the waste material in their operation. Recipient companies usually use the waste untreated or subject it to a minimal amount of treatment prior to reuse.

### Research and Development

Involves applied hazardous waste research, development, and demonstration projects and may include feasibility studies, pilot- and bench-scale demonstration projects, and economic and policy analyses. Usually funded by government and in some cases the private sector, these projects are typically undertaken by universities and other academic institutions.

### Regulatory Requirements

**Reporting Requirements.** Requests by the government for generator information sufficient to determine the effectiveness of waste minimization programs. In some cases the companies involved in waste minimization are required to submit their plan as a part of a permit application to the regulating authority for adequacy.

**Reduction Standards.** Specific targets for reduction over time in the quantity and/or toxicity of certain waste streams.

**Design or Operating Standards.** Limitations or criteria applied to process

design and manufacturing operations, usually specific to particular industries and/or waste streams, to minimize waste generation.

**Management Standards.** Directed to encourage waste minimization. Requires good management practice standards which may include mandatory audits or listing of wastes on a waste exchange.

### Education

**Governor's or Other Award Programs.** A low-cost means to recognize and honor companies and institutions that have demonstrated outstanding achievement in hazardous waste management.

**Public Education/Outreach.** Promotional activities designed to keep the public informed of the need for a commitment to hazardous waste minimization. Targeted in general to citizen groups, trade associations, and professional organizations.

### Chapter V—Projecting Hazardous Waste Generation, The Demand for Management Capacity, and Capacity Needs

#### Purpose

This chapter outlines procedures for states to use when projecting hazardous waste generation and its subsequent demand for waste management capacity. Projected total demands are then compared to projected capacities for each of the 15 waste management categories presented in Chapter III. The result is an estimate of projected capacity needs for each waste management category. The completed worksheets and narrative should represent Part 3 of the CAP.

States must project waste generated within their borders in 1989, 1995, and 2009. The 1989 projection year corresponds to the next biennial reporting year. The 1995 projection will present a near-term estimate of demands for waste management after most of the current hazardous waste regulations—the land disposal restrictions in particular—take effect. The law specified that states assure adequate waste management capacity for 20 years, hence the year 2009 projection.

The methods contained in this chapter reflect procedures commonly used today to project waste generation. The Agency recognizes the inherent uncertainty of projections and the limitations of all procedures. For this reason, the Agency does not endorse any one system; states are free to choose the approach that best represents their particular situation. However, all projections must adhere to the following general guidelines:

- Projections must take into account economic expansion or contraction and its effect on the quantity of waste generated by the major sources within the state.

- Projection must account for the effects of waste minimization activities on future waste generation, based on clear documentation as described in Chapter IV and quantified in this chapter.

- Projections must account for non-recurrent wastes (from equipment decommissioning or replacement, materials or product disposal, materials or product spills, closure actions, remedial or corrective actions, or other non-routine sources) as well as waste generated from continuous industrial processes.

- To the extent possible, the state must address the potential effect of regulatory change on future waste generation and management options. EPA will provide a list of key regulations that the states should include in their analysis.

#### General Instructions

For each of the projection years, states should summarize their projections of waste quantities and effects on waste management capacity using worksheets V-1 and V-2, respectively. Worksheet V-2 is used to calculate waste management demand from in-state waste after subtracting waste exports. Worksheet V-3 is similar to Worksheet V-2, except that it requires states to estimate management capacity demand based on total in-state waste generation (including projected exports). Final potential capacity needs are determined in Worksheet V-4, which asks states to report estimated capacity needs after incorporating the effect of waste imports and exports. While the combined effect of imports and exports are used to estimate capacity needs, states also must report the balance of total in-state generated waste (including potential exports) against total in-state available capacity (excluding potential exports). This calculation, also required in Worksheet V-4, will be used by EPA to examine the effect of waste imports and exports on each state's capacity balance.

The following sections provide general instructions on projecting waste from continuous industrial processes using common economic indicators and procedures; and projecting waste generated intermittently, such as that resulting from RCRA and CERCLA cleanups. Much of the analysis conducted for Chapter III will be used to complete this chapter, and similar



expertise will be needed. In addition, states should coordinate their efforts with other state offices responsible for projecting and/or tracking state industrial activity or revenues. To the extent possible waste generation should be based on the same economic forecast information used to project general business activity in the state or region.

Technical assistance is available from EPA in several forms. A Hotline at the Agency is available during the hours of XX and XX Eastern Standard Time, Monday through Friday. In addition, the EPA Regional Office serving your state has assigned several individuals and phone numbers.

#### Evaluation Criteria

The Agency recognizes that no single methodology exists that is universally acceptable for projecting hazardous waste generation. Considerable discretion is left to the states to formulate reasonable projection methods. However, the Agency plans to evaluate the waste projections portion of the state's CAP on the following points:

- The underlying economic assumptions used in the projections should reflect existing or official projections of state economic activity unless otherwise justified by the state;
- The projections must account for major waste producing industries and the range of possible changes in the economic behavior of these industries;
- The projections must account for non-recurrent wastes (e.g., CERCLA or RCRA remedial or corrective actions);
- The projections must correctly incorporate the predicted effects of waste minimization as outlined in Chapter IV; and
- The projections must document assumptions regarding waste imports and exports as required in the CAP.

Many states will have the capabilities to provide detailed estimates of future waste generation amounts and their demand for management capacity. Others may not have these capabilities or may choose not to make detailed estimates either because they have limited industrial sources or do not foresee significant economic changes taking place. EPA will accept all projections as long as they show that the state has considered all relevant factors and is not in conflict with other official state policy on economic development.

EPA recognizes that projections made for year 20 will be far less certain than those made over the short term. In the absence of additional information, the EPA will accept linear extrapolation of

trends developed through the 1995 projection period.

#### Projecting Recurrent Waste Generation From Industrial Sources

Using 1987 generation as a baseline, states should first estimate expected generation for projection years 1989, 1995, and 2009 solely on the basis of economic changes. States should then make adjustments to these estimates to account for the expected effects of waste minimization as described in Chapter IV. Finally, states should, to the best of their ability, adjust their projections to account for the effects of pending regulations (listed subsequently in this chapter) on the demand for waste management capacity.

#### Projecting Waste Generation Based on Economic Expansion or Contraction

Economic change is a combination of two measures: changes in economic base (reflected by the basic composition of the region's industry, including new entrants and closures) and changes in industrial output (defined as the total value of goods and services from current industrial production). The agency does not expect states to forecast changes in their state's economic base, unless such changes are likely and critical—announced plant closures or start-ups of key industries are examples of such critical changes. However, absent such information, states should assume that the set of industries responsible for generating the majority of the state's hazardous waste in the base year will exist over the projection period.

The states should account for the effects of economic forces specific to each state and, ideally, to those industries currently responsible for the majority of waste generated. This involves two steps. First, states should compile a list of those industries that are responsible for generating the majority of waste (as defined by the 17 CAP waste categories) in their state. For states using EPA's new Biennial Report forms, these data are available in Form IC, Section IV (SIC code identification) and either GM or GS (waste quantities).

Second, the waste generation characteristics of these industries should be normalized to some indicator of economic output (discussed subsequently). Projections of the same economic indicator (or growth factors) then can be used to project waste from the industrial category in question. For states in which most of the 17 waste categories are dominated by a single industry or ones having similar growth potential, these growth factors simply may be applied to each of the 17 waste categories as appropriate.

Industries of Interest. Ideally, industrial activity should be forecast for each 4-digit SIC (Standard Industrial Classification) code industry responsible for one percent or more of a state's total waste volume. There are about 450 4-digit SIC industries represented in the Office of Management and Budget's Standard Industrial Classification system. While the mix of major waste generating industries will vary from state to state, most states should find that less than 100 4-digit SIC industries will account for 95 percent to 99 percent of total state generation. In many states, particularly the smaller ones, the majority of hazardous waste quantities will be attributable to perhaps 20 industry groups.

Even though economic projections at the 4-digit SIC code level of detail may provide the most accurate basis for projecting future waste quantities attributable to economic change, states are not required to build sophisticated projections models to track changes at this level. States should choose the level of detail in their economic projections best suited to their industrial bases, level of detail in baseline waste generation data, and technical support available within the state to make projections. Some states may find, for example, that projections at the 2-digit SIC code level are most appropriate. Others may not have access to SIC code information linked to waste generation and may thus choose to project economic change using a statewide growth index such as total state product. All of these methods will be acceptable to the Agency if they are appropriately documented.

Factors for Projection. Actual records of the number of product units manufactured—tons of steel or barrels of oil, for example—are the most certain measures of industrial output because they capture, by definition, actual manufacturing activity within the plant. But using these measures to project future output in 70 to 100 industries would be unnecessarily complex. In the past few years, states have chosen to project economic changes using the following indicators, specific to a target group of 4-digit SIC industries:

- Total employment;
- Production employment;
- Value added by manufacture;
- Value of shipments; and
- Personal income from manufacturing (wages).

States should choose the indicator that most closely approximates in-plant industrial activity, and for which adequate data is available. None of the



indicators above are perfect in this respect but some are better than others. Availability of the data may be the overriding factor influencing the state's decision.

Value of shipments, for example, is routinely reported in national aggregate statistics and at the individual plant level. But this measure does not distinguish between manufacturing and inventories as the source of shipments. Waste generation would be overestimated, for example, if waste was normalized to data that represented shipments from inventories instead of production, since actual production levels (and, hence, waste) in that year would be lower than shipments would indicate. In addition, the double counting associated with cross-shippments in value of shipments data may account for overestimates of plant activity.

Total employment also is routinely reported in national statistics and by individual plants, but changes in employment can misrepresent manufacturing activity if management and production employment change at different rates. In addition, waste generation estimates based on employment will be significantly overestimated if a company headquarters, representing largely management as opposed to production labor, constitutes a significant share of total employment within a given SIC code.

Value added closely parallels manufacturing activity because this measure avoids the problem of inventories associated with value of shipments data. These data are more limited, however, as the national level and they are rarely reported by individual manufacturing establishments.

While production employment is an input measure of manufacturing and not an output measure, it remains a good overall indicator insofar as it parallels manufacturing activity and is generally available at the 4-digit SIC code level regionally. It is important to account for changes in labor productivity, however, in projections of waste generation as a function of production employment. As industries automate, the ratio of waste per production employee may change, leading to over- or underestimates of future waste production if these adjustments are overlooked. In general, as labor productivity increases (the output per production employee rises), more waste will be created per employee in future years than in the baseline year.

Personal income from manufacturing, or simply wages, is another good overall

indicator of plant activity. Estimates of personal income from manufacturing are available in national aggregate form, by 4-digit SIC code, and by state.

Sources of Data. The U.S. Department of Commerce (Bureau of the Census) and the U.S. Department of Labor (Bureau of Labor Statistics) collect and publish historical data on value of shipments, value added, total employment, production employment and income from manufacturing at the 4-digit SIC code level, by state or by county. At a minimum, all states can use these data to project future trends based on trends over the past five years. Alternatively, the Bureau of Industrial Economics prepares similar projections for groups of 4-digit SIC industries for the nation as a whole in its annual publication, *U.S. Industrial Outlook*. States can adapt these national projections if they so choose or they can adjust them with state-specific data. The Bureau of the Census' publication, *County Business Patterns*, provides a source of historical data on employment and sales, by industry and by county. Projections of personal income from manufacturing by SIC code and state through the year 2000 are available through the U.S. Bureau of Labor Statistics. Similar projections at the state level may be available from state agencies responsible for employment or labor trends.

Typically, a state economic development office or office of the Governor responsible for revenue projections will prepare its own forecast of industry growth. These projections may be incorporated directly into capacity assurance projections.

Reporting Projections. States should report the results of hazardous waste projections attributable to economic change in column A of Worksheet V-1. A separate Worksheet should be presented for each projection year.

Documenting Projections. States should develop narrative support for the projections of waste generation and demand for management types presented in Worksheet V-1. In particular, the narrative documenting the effects of economic change should explain how growth factors were applied to project waste.

#### Incorporating the Effects of Waste Minimization

States have the option to reduce demands for waste management capacity in 1989, 1995, and 2000 by promoting waste reduction and projecting its effects. Plans for implementing and accounting for such activities must be documented in Chapter IV. In that chapter, states must

identify two key parameters of their waste reduction adjustments: (1) Target percent or tonnage reductions by waste type, and (2) a schedule over which these reductions are expected to take place. In this chapter, states must show how the factors developed in Chapter IV have been incorporated in their projections.

The most straightforward approach is to adjust the expected waste quantities generated in a target year by the quantity expected to be reduced through waste reduction. A simple narrative explanation of how waste reduction factors were applied should be included to support the adjustments made in column B of Worksheet V-1.

#### Incorporating the Effects of Regulatory Changes on Waste Generation

EPA anticipates that changes in regulations over the projection period will affect both waste quantities (the demand for waste management capacity) and the allowable alternatives for management. Both are expected to affect a state's ability to assure adequate capacity. This section identifies the extent to which states should include the effects of regulatory changes on projections of waste generation. A subsequent section addresses the effects of regulatory changes on capacity supply and on the allowable matching of waste types to management categories.

The effects of regulatory changes on the demand side should be incorporated in column C of Worksheet V-1.

Regulatory effects on waste generation also should be documented separately in a narrative statement.

Because of the uncertainty in projecting these effects over a 20-year period, EPA expects the states to account for regulatory change only to the extent that the Agency has published and can make available to the states its Regulatory Impact Analysis (RIA) for each rule, as of October 1, 1988. The RIA will describe likely quantitative effects on waste generation and consequent demands for management technologies. The following is a list of rules that EPA expects to have an impact on capacity assurance, and for which publication of an RIA is expected by October 1.

Land Disposal Restrictions, First Third. Should affect virtually all listed and characteristic wastes and, by extension, all industries generating them. Expected to shift the management of certain waste streams away from land disposal and toward incineration and other treatment options. Also expected to stimulate waste reduction.



Treatment standards must be promulgated by May 8, 1990.

New Listings. Should expand the number of waste streams under regulation; six new wood preserving waste streams will be proposed in September 1988, including two wastewater streams (1.1 million tons/year) and four process streams (45,000 tons/year); two new waste streams to be added in summer 1988 from methyl bromide manufacture (amounts confidential); one new waste stream from petroleum refining to be added in 1988 (200,000 tons/year).

States should estimate the additions (or deletions) to regulated waste volumes attributable to the above rules and record these results in Column C of Worksheet V-1.

#### Projecting Non-Recurrent and One-Time Only Waste Generation

Non-recurrent waste generation can result from periodic industrial operations (boiler and other process unit maintenance) and RCRA and CERCLA corrective actions and cleanups. Waste generated from these sources—while possibly significant—are much more difficult to project than waste from continuous industrial processes. In the long run, the demand for capacity imposed by one-time wastes may be less important to capacity assurance than the demand imposed by recurrent wastes. Separating one-time from recurrent wastes, therefore, should be in the state's best interest.

EPA recognizes that data for projecting the generation of one-time waste are generally less available and less reliable than data on recurrent waste generation. This section describes possible methods that states may use to make such projections, given current data inadequacies. States are encouraged to develop alternative methods to project one-time waste generation and to fully document their assumptions and procedures.

While data may not always be available to support realistic calculations, states—at a minimum—should attempt to estimate RCRA-hazardous waste produced from the following classes of activities:

- Site remedial actions (from federal Superfund and state clean-ups);
- RCRA corrective actions;
- Underground storage tank cleanup; and
- Site remediation as a result of real estate transfer statutes.

The projected sum of all non-recurrent waste quantities should be reported by waste type in column D of Worksheet V-1 (one worksheet for each projection

year). Calculations should be documented in a separate narrative.

#### Notice of Corrective Actions to Receiving State

To assist states in accounting for the amounts of CERCLA corrective action waste imported into their state, the EPA will inform the recipient state regarding its intention to fund remedial actions and immediate removals that will cause wastes to be shipped to that state. This information will include the source of waste, waste quantity, waste characteristics, proposed treatment or disposal facility to receive waste, and anticipated shipment date. This information will be provided to the recipient state's environmental regulatory agency at least 45 days in advance of the anticipated shipment date. This action will allow the recipient state an opportunity to comment on the consistency of the removal with both the exporting state's CAP and its own plan.

#### Site Remedial Actions

For many Superfund sites, estimates of the quantities of contaminated site wastes (soils and groundwater) that may require off-site treatment and disposal are available in Records of Decision (RODS). Where RODS have not yet been prepared, more limited information regarding quantities likely to be encountered at Superfund sites may be available in Remedial Investigations, Feasibility Studies, or Hazard Ranking System listings. These documents are available for review in EPA's 10 regional offices. The annual volume of wastes to be removed from these sites is largely a function of the extent of contamination (and hence the decision to ship waste off-site or handle it on-site) and rate of expenditures for site cleanup activities. EPA recognizes that these estimates will be highly uncertain, especially for those sites without approved RODs or for state cleanup sites without comparable documentation.

Where data permit, states should prepare a list of all federal and state Superfund sites for which reliable estimates of the quantity to be handled is available and estimate a time interval over which actual remedial work will be completed. Such estimates may be best made by the State Superfund office or the EPA regional Superfund coordinator. For each site, prepare a listing of the contaminants that predominate and match them as closely as possible to one (or more) of the 17 capacity assurance waste categories. Much of this information should be available in site investigation and decision documents referenced above. In the absence of such

information, exclude this site from further consideration.

States should then estimate the quantity of Superfund waste expected to be handled off-site at in-state facilities versus that quantity to be exported. Superfund waste shipped off-site must be manifested like any other waste stream regulated under RCRA. An analysis of current waste manifests may be used to project future in-state handling from exported Superfund waste. Regardless of how states make this estimate, however, it should be fully documented with descriptions of procedures and explanations of assumptions.

#### RCRA Corrective Action Sites

States should assemble the following information:

(1) From the regional EPA office or the state RCRA permitting office (depending on your state's authorization), compile a list of potential RCRA sites that will require corrective action (be sure to include corrective action as a condition of obtaining a Part B permit plus corrective action as a condition of closure). In most cases, states will be unable to estimate waste quantities or waste volumes to be removed unless a Corrective Measures Study (CMS) has been prepared. The Agency recognizes that as relatively few corrective action sites have progressed to the CMS stage (several years may elapse before a potential site has been fully evaluated), states may be limited in their ability to incorporate the effects of RCRA corrective action into their 1989 CAP. In the absence of these data, states may wish to assume that a proportion of RCRA facilities will require corrective action and document that assumption to the best of their ability.

(2) Estimate the amounts and timing of expected on-site management demands and off-site demands using methods described above for Superfund site estimates.

(3) Estimate the proportion of off-site waste expected to be shipped to in-state facilities and that shipped out of state using information on waste manifest forms. In the absence of an historical record of shipments from RCRA corrective action sites, the states should assume that all removed material will be shipped to in-state facilities, if they now exist. Otherwise assume that they will be exported.

#### Underground Storage Tanks

While they are regulated separately, corrective action requirements for releases from tanks containing petroleum or hazardous substances are



similar to other cleanup requirements—visibly contaminated soils must be removed. If residual contamination of groundwater or surrounding soils persists, additional cleanup is necessary. Actual levels of cleanup are determined on the basis of site-specific environmental risks and potential exposure. States should include estimates of RCRA-hazardous waste quantities likely to be generated as a result of underground storage tank remediation, only if sufficient data are available. The types of data needed include:

- Inventory of tanks subject to regulation
- Statistics on leakage rates, preferably by type of tank
- Characterization of tank inventory by contents (gasoline, solvents, other organics, inorganics)
- Field estimates of extent of contamination. If these data are available, states should estimate quantities and timing of demand for waste management services using methods similar to those presented for estimating Superfund demands.

#### Site Remediation from Real Estate Transaction Laws

If applicable, states should include estimates of RCRA-regulated waste generated from site remediation pursuant to state real estate transfer statutes (i.e. New Jersey's ECRA statute) based on trends in past rates of generation, if such data are available.

#### Total Projected Demands

States should record the sum of columns A through D in column E of Worksheet V-1. This quantity represents the total projected demand for waste management capacity without consideration for the location of handling or of the effects of imports or exports.

#### Matching Waste Types to Management Categories and Incorporating the Effects of Regulatory Change on Capacity Supply

Total demands for waste management capacity should be brought forward from Column E of Worksheet V-1 and distributed among the 15 waste management categories in Worksheet V-2 in such a way that none of the rules expected to be in place in each projection year would be violated. Most untreated liquid and sludges, for example, should be banned from land disposal by 1995; thus, no waste of this nature should be matched with land disposal in Worksheet V-2, unless it first undergoes some treatment. States should briefly describe the assumptions

behind their projected matches of waste types to management categories.

States also should estimate the demand for RCRA capacity imposed by non-regulated waste. EPA will provide estimates of these data as of 1986 from the TSDR Survey. States can hold this level of demand steady over the projection period or adjust it up or down, consistent with state policies on the proper handling of non RCRA-regulated waste. These entries should be documented in a separate narrative.

**Projecting Efforts.** States may show level, reduced, or increased exports (relative to 1987 levels) in the final column of Worksheet V-2, to the extent that they do not violate the "reasonableness" criteria of Appendix A. EPA will assume that the pattern of exports (the states to which different quantities of exports are sent) in the projection years will remain the same as the pattern of exports in 1987 as noted in Worksheet III-7. If a state believes that this pattern will change in any projection year, a narrative statement should accompany worksheet V-2, explaining the changes. For example, a state might enter into an agreement with another state that changes the pattern of export flows to that state, as reflected in both states' CAPs.

Worksheet V-3 is similar to V-2, except that it asks states to determine the effect on management capacity of all projected in-state waste, including exports. The results of both Worksheets will be used to estimate capacity need in Worksheet V-4.

#### Calculating Hazardous Waste Management Capacity Needs

Using Worksheet V-4, states must determine the amount of management capacity potentially needed in the state over the next 20 years. In determining these needs, the state must make adjustments to account for on-site and captive handling and describe assumptions on waste imports and exports.

#### Adjustments for On-Site and Captive Handling

For purposes of assuring capacity, states can assume that all waste (or the proportion of total waste) currently managed on-site will continue to be managed on-site, unless the state believes regulatory changes or market forces will alter this pattern. If such shifts are anticipated, states should document the assumptions leading to this conclusion. Similarly, states can assume that all waste (for the proportion of total waste) now handled in captive facilities will be handled in captive facilities in the projection years.

In either case, states should retrieve the appropriate data from Chapter III, Worksheets III-3 and III-4 and present their best estimate of on-site and captive handling in Worksheet V-4 (a separate worksheet for each projection year). The first row of Worksheet V-4 should be brought forward from the column totals of Worksheets V-2 and V-3.

#### Projecting Commercial Capacity Needs

States should calculate their potential need for additional in-state waste management capacity using the top block of rows in Worksheet V-4.

These calculations use the demand projection figures obtained from Worksheet V-2, which subtract the quantities of waste projected to be exported by the state (see "Projecting Exports," page V-7). To calculate "Total Demand With Imports, Excluding Exports," total demand estimates first must be transferred from the last row of Worksheet V-2 (for each appropriate projection year). Capacity demand directed to on-site and captive facilities next must be subtracted (see discussion above), and demand due to projected waste imports must be added.

**Projecting Waste Import Demand.** States may hold imports constant to 1987 levels—or allow them to grow—in their demand projections without providing additional narrative to EPA. If imports are shown to decline. The assumption of declining imports would be acceptable if it corresponds with CAP of the state exporting the waste, or if it is based on the importing state's assumption that export practices from other states will change over time in accordance with the process of Appendix A. If an assumption of declining imports is not supported by other states' CAPs, then the importing state must fully document the basis of its assumption.

**Final Calculation of Demand.** In estimating final demand, states may claim all available capacity projected as available through 1989, based on their analysis in Chapter III. Data on 1989 commercial capacity should be obtained from Worksheet III-6. The predicted 1989 commercial capacity should be subtracted from the total commercial demand figures in Worksheet V-4 to obtain an estimate of capacity shortfall (or excess) in each projection year. These figures will form the basis of capacity need plans as described in Chapter VI.

**Calculating the In-State Capacity Balance.** The bottom block of rows in Worksheet V-4 are used to calculate the balance of total in-state commercial capacity (excluding import demand)



against total in-state waste generation (including potential waste exports). To complete these calculations, states first should transfer the demand estimates from Worksheet V-3 (for each appropriate year) to Worksheet V-4 (for each appropriate year). Subsequent calculations then are similar to those described above (for the top block of rows), except that import effects are neglected.

The result of these calculations will be used by EPA to assess the effect of

waste imports and exports on the commercial capacity contained in each state. They will not be used as a basis for assessing future need.

#### *Plans to Address Capacity Shortfalls*

States that show an excess of management capacity in Worksheet V-4 for the projection years 1989, 1995, and 2009 are not required to present plans for addressing capacity shortfalls. These states must only supply brief information in Chapter VI.

States that show a shortfall of management capacity in Worksheet V-4 for projection years 1989, 1995, and 2009 must describe their procedures in Chapter VI to create new capacity through either new or expanded facilities in the state. States may choose not to meet the entire shortfall by creating new capacity. In this case they must revise their numbers for waste minimization (Chapter IV) and waste exports and recalculate Worksheet V-4.

#### WORKSHEET V-1.—SUMMARY OF IN-STATE WASTE QUANTITIES PRODUCED IN PROJECTION YEAR ———

[All in tons/year]

Management Technology	Projected Demand From Recurrent Waste Generation	Adjustment of Waste Reduction	Adjustment of Regulatory Change	Demand from One-Time Waste	Total Demand (A + B + C + D)
	A	B	C	D	E
1. Contaminated Soil					
2. Halogenated Solvents					
3. Nonhalogenated Solvents					
4. Halogenated Organic Liquids					
5. Nonhalogenated Organic Liquids					
6. Organic Liquids, NEC					
7. Mixed Organic/Inorganic Liquids					
8. Inorganic Liquids with Organics					
9. Halogenated Organic Solids/Sludges					
10. Nonhalogenated Organic Solids/Sludges					
11. Organic Solids/Sludges NEC					
12. Inorganic Liquids with Metals					
13. Inorganic Liquids, NEC					
14. Inorganic Solids/Sludges with Metals					
15. Inorganic Solids/Sludges, NEC					
16. Mixed Inorganic/Organic Solids/Sludges					
17. Other Wastes, NEC*					
Total					

\* Other wastes include explosives, other highly reactives, radioactive/hazardous mixed wastes, gases, lab packs, and PCBs mixed with RCRA waste. Please present each of these waste streams individually on a separate line if their waste quantity exceeds 5 percent of the total stated waste quantity.

Note: NEC=not elsewhere classified.



# Worksheet V-2:

Demand for Waste Management in Projection Year \_\_\_\_\_  
After All Adjustments

WASTE TYPES	MANAGEMENT CATEGORIES														
	Generation	Metals recovery	Solvents recovery	Other recovery	Incineration — Liquids	Incineration — Sludges/Solids	Energy recovery	Aqueous inorganic treatment	Aqueous organic treatment	Sludge treatment	Other treatment	Stabilization	Land treatment	Landfill	Deep-well injection
TOTAL															
Contaminated soil															
Halogenated solvents															
Nonhalogenated solvents															
Halogenated organic liquids															
Nonhalogenated organic liquids															
Organic liquids, NEC <sup>a</sup>															
Mixed organic/inorganic liquids															
Inorganic liquids w/organics															
Halogenated organic solids/sludges															
Nonhalogenated organic solids/sludges															
Organic solids/sludges, NEC															
Inorganic liquids w/metals															
Inorganic liquids, NEC															
Inorganic solids/sludges w/metals															
Inorganic solids/sludges, NEC															
Mixed organic/inorganic solids/sludges															
Other wastes, NEC <sup>b</sup>															
Non-RCRA Waste															
TOTAL															

a) Not Elsewhere Classified

b) Including explosives, other highly reactives, radioactive/hazardous mixed, gases, lab packs, &amp; PCBs mixed with RCRA wastes.



## Worksheet V-3:

Demand for Waste Management Capacity from  
All (Including Exports) In-State Generation in Projection Year \_\_\_\_\_

WASTE TYPES	MANAGEMENT CATEGORIES													
	Generation	Metals recovery	Solvents recovery	Other recovery	Incineration -- Liquids	Incineration -- Sludges/Solids	Energy recovery	Aqueous inorganic treatment	Aqueous organic treatment	Sludge treatment	Other treatment	Stabilization	Land treatment	Landfill
TOTAL														
Contaminated soil														
Halogenated solvents														
Nonhalogenated solvents														
Halogenated organic liquids														
Nonhalogenated organic liquids														
Organic liquids, NEC <sup>a</sup>														
Mixed organic/inorganic liquids														
Inorganic liquids w/organics														
Halogenated organic solids/sludges														
Nonhalogenated organic solids/sludges														
Organic solids/sludges, NEC														
Inorganic liquids w/metals														
Inorganic liquids, NEC														
Inorganic solids/sludges w/metals														
Inorganic solids/sludges, NEC														
Mixed organic/inorganic solids/sludges														
Other wastes, NEC <sup>b</sup>														
Non-RCRA Waste														
TOTAL														

a) Not Elsewhere Classified

b) Including explosives, other highly reactives, radioactive/hazardous mixed, gases, lab packs, &amp; PCBs mixed with RCRA wastes.

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## WORKSHEET V-4.—SUMMARY OF DEMAND FOR COMMERCIAL HAZARDOUS WASTE MANAGEMENT CAPACITY IN PROJECTION YEAR

	Waste Management Category						
	Thermal Destruction (all in tons/year)			Final Disposition			
	Liquids Incineration	Solids Incineration	Energy Recovery	Land Treatment (in tons/year)	Deepwell Injection (in tons/year)	Landfill (tons)	Other disposal
Total Demand with Imports, Excluding Exports – waste handled on-site – waste handled in captive facilities + waste imports = Demand for Off-Site Commercial Waste Management Capacity – commercial capacity available 1989 = Estimated Capacity Shortfall (if positive) Estimated Capacity Remaining (if negative)							
Total Demand Excluding Imports, Including Exports – waste handled on-site – Waste handled in captive facilities = Demand for Off-Site Commerical Waste Management Capacity – commercial capacity available 1989 = In-state Capacity Balance							

## WORKSHEET V-4 (CONTINUED).—SUMMARY OF DEMAND FOR COMMERCIAL HAZARDOUS WASTE MANAGEMENT CAPACITY IN PROJECTION YEAR —

	Waste Management Category							
	Reuse/Recovery (all in tons/year)			Treatment (all in tons/year)				
	Metals	Solvents	Others	Organic *	Inorganic *	Sludge	Stabilization	Other
Total Demand with Imports, Excluding Exports — waste handled on-site — waste handled in captive facilities + waste imports = Demand for Off-Site Commercial Waste Management Capacity — commercial capacity available 1989 + Estimated Capacity Shortfall (if positive) Estimated Capacity Remaining (if negative)								
Total Demand Excluding Imports, Including Exports — waste handled on-site — waste handled in captive facilities = Demand for Off-Site Commercial Waste Management Capacity — commercial capacity available 1989 = In-State Capacity Balance								

\*Note: Separate reporting for aqueous inorganic and aqueous organic treatment is optional in 1989, but mandatory in and there after.

## Chapter VI—Documenting State Plans for Increasing In-State Capacity

## Purpose

This chapter requests information on each State's procedures that affect or facilitate the development of hazardous waste management capacity. Because the CAP addresses a 20 year timeframe, most states will not have adequate capacity in-place today to handle all the hazardous waste generated over the next 20 years, making it necessary for States to document their procedures to allow or facilitate capacity development.

Chapter V of the guidance document asked each state to summarize their projected need for hazardous waste management capacity over the next twenty years, after taking into account waste minimization efforts and waste exports. All states showing a shortfall in their hazardous waste management capacity in their projection years must describe their plans for addressing this shortfall through their facility siting process and their procedures to process existing facility expansion applications. States projecting hazardous waste capacity shortfalls within the projection period through 1995 also must report key

interim and final siting milestones, such as site designation, permit submission, permit approval, and expected construction start.

## General Instructions

To complete the requirements of this chapter, states should respond to the questions contained in the attached forms. States should copy and complete the appropriate forms and include them in the CAP. Additional documentation should be included as needed.

Not all forms must be completed. States that project sufficient capacity through year 20 must only complete



Form I, "General Siting Description". This form requests general information on state procedures that affect or facilitate the development of new hazardous waste capacity. It covers such items as the state's general siting process, preemption and override authority of local and state government, and laws that restrict the operation or configuration of a facility.

States that project a capacity shortfall in any projection year after taking into account waste minimization and waste exports must complete both Form I and Form II, "Capacity Development Plans", requests a more detailed description of topics covered under Form I.

Finally, those states that project a shortfall in 1989 or 1995 must complete all forms up through Form III, "Milestones and State Review". This form requests information on the state's anticipated progress in meeting its shortfall.

A glossary of the terms used in this Chapter is contained in the Definition Section at the end of the chapter. In addition, technical assistance is available from EPA in several forms. A Hotline at the Agency is available during the hours of XX and XX Eastern Standard Time, Monday through Friday. In addition, the EPA Regional Office serving your state has assigned several individuals to answer questions. Please consult the *Technical Reference Manual* for more details, including a list of individuals and phone numbers.

#### Evaluation Criteria

The EPA recognizes that many different state approaches exist for planning and overseeing the development of new hazardous waste management capacity. Each state has and probably will employ a different strategy to ensure that it has adequate capacity now and in the future. The Agency therefore will focus its evaluation on two key areas:

- the ability of a state program to allow or facilitate the development of adequate capacity when needed; and,
- The degree of a state's reliance on out-of-state capacity as a substitute for developing in-state capacity.

If a state has shown in Chapter V that it plans to construct new capacity to meet projected needs, EPA will evaluate the ability of a state program to meet the expected shortfall. Because the Agency recognizes that states can do many things to promote, facilitate, or simply allow the development of new capacity, the Agency will concentrate its review on items that may indicate a flawed program or that actually hinder siting. Practices or policies that may either hinder new capacity development or

indicate program difficulties include the following:

- A state siting process that is subject to strong local preemption powers not firmly grounded in environmental, health, and safety concerns. An inability of the state to appeal or rectify such preemption.
- The absence of a siting program having clearly defined steps and procedures. A lack of sufficient opportunity for public review and comment. The absence of clear time lines between permit review, comment, and approval or denial.
- The enactment of rules that may be viewed as discriminatory, such as placing limits on facility size, type of waste allowed at the facility based on origin of the waste, or outright prohibition of waste management facilities if not based on environmental, health, and safety concerns. (This would not include limitations that may be agreed to by the facility developer and the host community as part of siting process negotiation.)
- A state having sufficient demand for new hazardous waste capacity accompanied by a history of failed siting efforts.

The Agency also will examine the states reliance on out-of-state hazardous waste management capacity to determine if it conflicts with the requirements set forth in Appendix A.

#### Form I: General Siting Description

All states must fill out this form. States should copy and complete the form and include it—along with additional documentation—in Part 4 of their CAP. Please attach additional information if more space is needed to answer any question.

Name of Respondent \_\_\_\_\_  
Telephone number \_\_\_\_\_  
Address \_\_\_\_\_

1. Does your State have a formal hazardous waste management facility siting process in addition to the RCRA permitting process?  
—Yes —No?

If Yes,

1a. What are the titles of the legislative authorities and when were they enacted?

2. Does your State have a siting agency that is distinct from the RCRA regulatory agency?  
—Yes —No?

If Yes,

2a. What are the titles of the legislative authorities and when were they enacted?

3. Please describe (in a brief narrative) the procedure used to review facility applications, select sites (if applicable), review permits, and provide public comment. Please indicate the time required to complete major steps, such as the time required between permit application and approval/denial. Include an explanation of the appeals

process available to the siting applicant, the host community, and siting opponents. (Where applicable, please note how a particular activity differs for expansion of existing facilities compared to siting of new facilities. If the process is significantly different for new sitings and expansions, please prepare two separate descriptions.)

3a. If possible, please construct a flowchart showing the major steps of the siting process as described in your narrative. Where known, indicate the time necessary for an application to proceed through each required step. (See example contained in back of this chapter.)

4. Please describe (in a brief narrative) the outcome of recent siting applications since 1986.

5. The following questions address basic laws and rules that may affect the siting or expansion of new facilities. When answering the following questions, please note the relevant law or rule (if applicable) and briefly describe any special circumstances or constraints that apply.

5a. Do local governments in your State have the authority to approve RCRA permits?  
—Yes —No?

If Yes, please list the applicable regulation or authority.

5b. Do local governments in your State have the power to prohibit facility siting by the use of zoning ordinances?  
—Yes —No?

If Yes, please list the applicable regulation or authority.

5c. Does your State have the power to override local zoning authority and/or preempt local zoning powers?  
—Yes —No?

If Yes, please list the applicable regulation or authority.

5d. Does your State have the power to override and/or preempt any other local authorities that could prohibit or restrict capacity development?  
—Yes —No?

If Yes, please list the applicable regulation or authority.

5e. Are there State restrictions on the size or number of new or expanded facilities?  
—Yes —No?

If Yes, please explain.

5f. Does the State allow facilities to be built that have greater capacity than that needed to treat in-State waste?  
—Yes —No?

If No, please explain.

6. The following pertain to laws and regulations that affect interstate transportation of hazardous waste.

6a. Does your State assess a fee on the generation of hazardous waste?  
—Yes —No?

If Yes, please explain.



6b. Does your State assess a fee for the treatment or disposal of hazardous waste?  
—Yes —No?

If Yes, please explain.

6c. Does your State have the power to establish differential fees on waste that is imported for treatment and/or disposal?

—Yes —No?

If Yes, please explain.

6d. Are any limits placed on the size of the differential fee?

—Yes —No?

If Yes, please explain.

6e. Do local or county governments have the power to establish differential fees on waste that is treated and/or disposed of in their jurisdiction?

—Yes —No?

If Yes, please explain.

7. In addition to the CAP, has the State conducted a needs assessment?

—Yes —No?

7a. Does your State plan to use the CAP to assess need?

—Yes —No?

7b. If not, what do they plan to use to determine the need for new facility capacity?

8. Does the needs assessment indicate a potential shortfall (in commercial capacity)?

Projection Year 1989 —Yes —No

Projection Year 1995 —Yes —No

Projection Year 2009 —Yes —No

If You Answered Yes to Any Part of Question 8, You Must Complete Form II.

#### Form II. Capacity Development Plans

Only those states that project a capacity shortfall in any projection year must complete this form. States should copy and complete the form and include it—along with additional documentation—in Part 4 of their CAP. Please attach additional information if more space is needed to answer any question.

Name of Respondent \_\_\_\_\_

Telephone number \_\_\_\_\_

Address \_\_\_\_\_

1. How much new commercial facility capacity will be needed by 1989, 1995, and 2009 to meet the shortfall anticipated for hazardous waste management capacity? See Worksheet VI-1.

2. How does your State intend to develop new in-State capacity as identified in its needs assessment?

—By siting new facilities

—Through the expansion of existing facilities

—Both

—Other, please explain

3. If you intend to meet new capacity needs by increasing waste exports beyond the 1987 levels, please explain why. Please indicate whether such plans are based on management planning efforts with other states, industries increasing exports to captive facilities, any environmental or economic considerations that restrict development of in-State capacity, or projections of current patterns.

3a. Have you contacted states that now receive your waste exports prior to completing your CAP?

—Yes —No?

3b. If Yes, will the CAPs of these states reflect your projected export patterns?

—Yes —No?

Please list the states that you have contacted.

3c. Are you participating in a multi-state hazardous waste management planning effort?

—Yes —No?

3d. Please list the participating states.

4. Does your State have siting criteria?

—Yes —No?

If Yes, please attach information describing your siting criteria.

5. Are any of the following methods used in your State to select sites or encourage site development (check all that apply)?

—State selection of specific site

—State purchase of specific site

—State inventory of suitable sites

—Private nomination of site

—Local nomination of site

—Permit fast tracking

—Other, please list:

6. How is the public allowed to participate in the siting process in order to affect the siting decision?

—Adjudicatory public hearings

—Informational public hearings

—Local advisory committee

—Local representatives on siting board

—Other, please explain

7. Is financial assistance provided to the local community to allow it to review the siting application and conduct an environmental or health assessment?

—Yes —No?

If Yes,

7a. Who supplies the funds?

—State

—Siting applicant

—Other, please explain

7b. What is the maximum amount of funding a community may receive?

\$ \_\_\_\_\_

7c. Are there any restrictions on the use of the funds?

—Yes —No?

If Yes, what are they?

8. Does your State use negotiation in its siting process?

—Yes —No?

If Yes, please explain.

9. Are dispute resolution procedures used in your State to settle differences on siting issues?

—Yes —No?

If Yes, please explain.

10. Is compensation to host communities used in your State?

—Yes —No?

If Yes, please explain.

10a. Who is responsible for providing the compensation?

—The site developer

—The State

—Other, please explain

10b. What type(s) of compensation is used?

—Cash payments

—Fees based on waste management

activities

—Insurance

—Emergency training and equipment

—Operating concessions

—Other, please list:

11. Is your State authorized to build and/or operate a hazardous waste management facility?

—Yes —No?

If Yes, please explain (also please indicate if you presently own or operate any facilities).



States Projecting a Capacity Shortfall in 1989 or 1995 Must Complete Form III, Milestones and State Review.

States Only Projecting a Shortfall in 2009 Stop Here.

#### Form III: Milestones and State Review

Those states that have projected a shortfall for 1989 or 1995 must complete this form. States should copy and complete the form and include it—along with additional documentation—in Part 4 of their CAP. Please copy this form if more space is needed to describe your State's milestones.

Name of Respondent \_\_\_\_\_  
Telephone number \_\_\_\_\_  
Address \_\_\_\_\_

1. States must complete a schedule of capacity development milestones for each type of management capacity needed. These milestones should reflect key decision dates for different types of capacity. It is not necessary to list specific facilities. Please use Worksheet VI-2 to report these milestones.

However, states should also include milestones for approval of RCRA Part B permits for established facilities now operating under interim status.

The schedule of milestones in Worksheet VI-2 can include any steps in the State siting process that would indicate the development of needed capacity. For example, states with developed programs could define their milestones by specifying dates by which the following activities should be completed:

- Enter in a multi-state hazardous waste planning effort.
- Designation of candidate sites.
- Letter of intent to develop a facility from a private party (or equivalent commitment from a public entity).
- Identification of host community.
- Permit submission.
- Draft permit approval.
- Final permit approval.
- Construction start.
- Operation start.

States without a formal siting program also should report the above activities. However, they also may indicate key milestone dates

for developing their own siting program. This would include activities such as the following:

- Passage of siting legislation.
- Establishment of statewide siting criteria.
- Creation of a State board or authority.
- Development of siting regulations.

States are not restricted to the program elements suggested here, but are encouraged to achieve a level of specificity in defining milestones.

2. What are the likely measures your state will take if you do not meet an anticipated milestone?

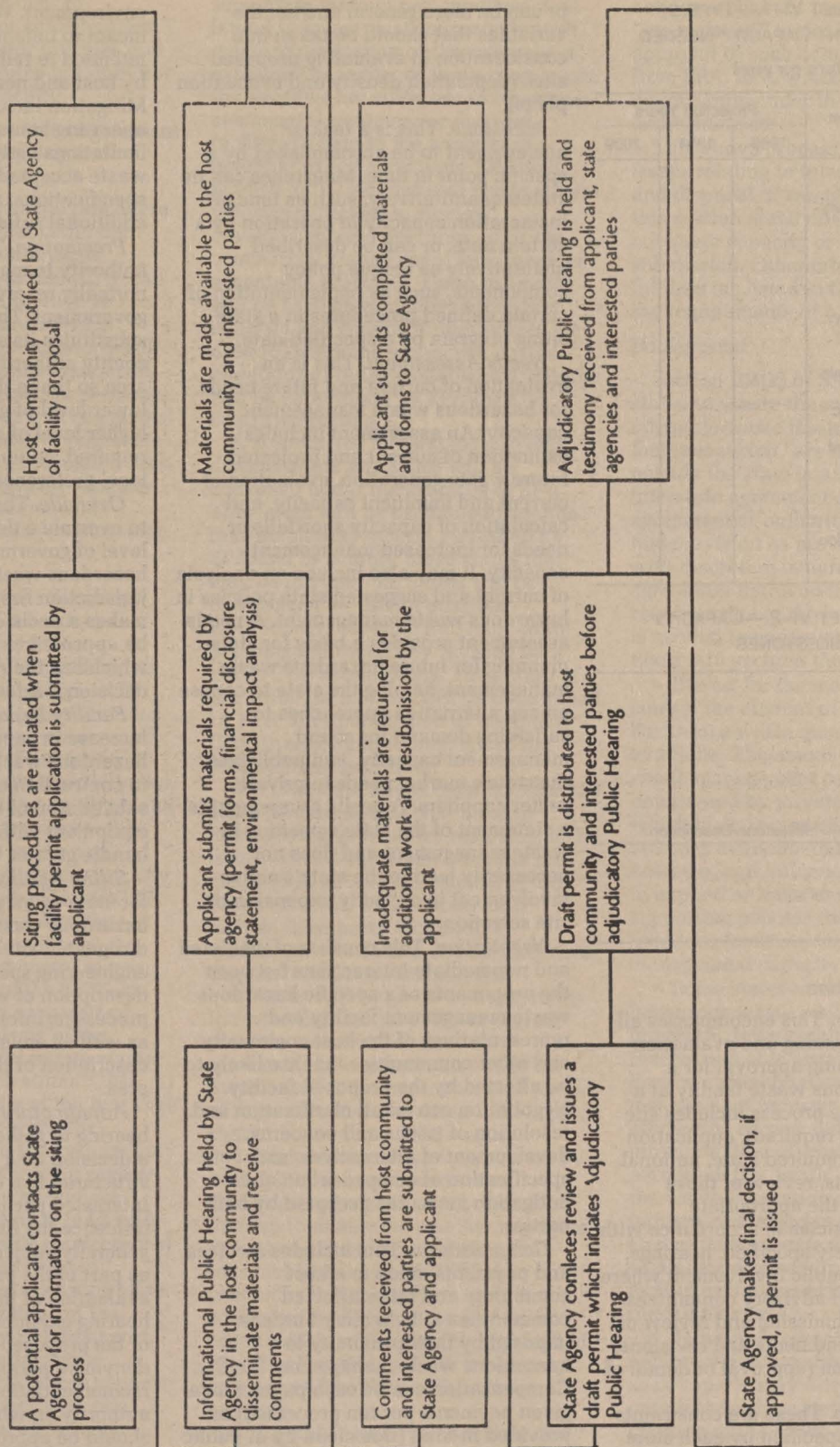
- The State will become more active in capacity development
- The State will change its siting process
- The State will temporarily increase exports
- Other, please explain \_\_\_\_\_

BILLING CODE 6560-50-M



## SITING PROCESS FLOWCHART

(See Form I, Question 3a.)



BILLING CODE 6560-50-C



# WORKSHEET VI-1.—TYPE OF MANAGEMENT CAPACITY NEEDED

[Tons per year]

Waste Management Categories	Projection Years		
	1989	1994	2009
1. Metals Recovery			
2. Solvents Recovery			
3. Other Recovery			
4. Incineration: Liquids Only			
5. Incineration: Solids/Sludges			
6. Energy Recovery: Kilns, Boilers, Furnaces			
7. Aqueous Inorganic Treatment			
8. Aqueous Organic Treatment			
9. Sludge Treatment			
10. Other treatment			
11. Stabilization			
12. Land Treatment			
13. Landfill			
14. Deep-well Injection			
15. Other Disposal			

# WORKSHEET VI-2.—CAPACITY MILESTONES

Type of management capacity (from list of 15 categories):	
Date	Milestone Description

## Definitions Section

**Siting Process.** This encompasses all elements of screening and evaluation involved in gaining approval for a specific hazardous waste facility at a specific site. The process includes site selection (when required), application for the various required state, national, and local permits, review of those applications by the appropriate government agencies in accordance with criteria previously specified, hearings, other forms of public involvement where applicable (local advisory committees, negotiation), submission and review of application amendments and revisions, and final decision (approval or denial of the application).

**Siting Criteria.** These are constraints and guidelines specified by each state for evaluating the suitability of individual sites proposed for hazardous waste management facilities. These criteria can include outright prohibitions against siting facilities in certain environments (in 100 year flood plains)

or can be more general and list the variables that should be taken into consideration in evaluating proposed sites (population density and evacuation plans).

**Milestone.** This is a task or achievement to be accomplished by a specific point in time. Milestones can be stated quantitatively, such as tons of incineration capacity in operation by a certain date, or can be described qualitatively as unique policy components, such as implementation of certain defined procedures in a state siting program by a specified date.

**Needs Assessment.** This is an evaluation of current and future needs for hazardous waste management capacity. An assessment includes estimation of current and projected future waste generation, evaluation of current and imminent capacity, and calculation of capacity shortfalls or needs for increased management capacity. It may also include an analysis of current and suggested state policies in hazardous waste management. A needs assessment provides a basis for state planning for future hazardous waste management, helping the state to choose among alternative approaches to satisfying demand for sound management capacity, and publicizes the state's market needs to private sector suppliers. A needs assessment is a statement of the state's position in waste management and does not necessarily lead to the state's active involvement in capacity expansion or site selection.

**Negotiation.** This consists of mediated and nonmediated interactions between the proponents of a specific hazardous waste management facility and representatives of the host community and other communities that are likely to be affected by the proposed facility. Negotiation can entail clarification and resolution of issues and concerns, development of alternatives, and specification of compensation and mitigation measures accepted by both parties.

**Compensation.** This includes services and payments made to a host community and other affected communities to help allay burdens imposed by their proximity to a hazardous waste management facility. Compensation can be cash payments (a given payments per ton processed) or provided in-kind (free clean-up of public hazardous waste spills, company maintenance of access roads).

**Mitigation.** These are measures implemented to minimize the impact of a hazardous waste facility on the surrounding population and the

environment. Whereas compensation is meant to balance burdens, mitigation is intended to reduce the burdens carried by host and nearby communities. Mitigation includes restrictions on operating hours and procedures, limitations on types and volumes of waste accepted, stricter engineering specifications, and construction of additional safety features.

**Preemption.** The state has the authority to make a decision in an area normally reserved for local or county government. That is, the state substitutes its authority for local or county authority in a specified policy area so that a decision normally left to a lower level of government is taken at a higher level of government which is not required, under preemption, to defer to local preferences.

**Override.** The state has the authority to overrule a decision made at a lower level of government. With regard to hazardous waste management, the local jurisdiction first evaluates the case and makes a decision; this decision can then be appealed to the higher authority which has the right to overturn the decision if it feels justified.

**Facility Expansion.** This is any increase in capacity of an existing hazardous waste facility. This can refer to construction of plant additions or substitution of new equipment for older equipment with a concomitant ability to handle greater volumes to waste.

**Siting Application.** This is a request for state agency approval of a specific hazardous waste facility on a designated site. Application contains engineering specifications of the facility, description of wastes and technical processes, information on the developer, as well as environmental and geological description of the site and surrounding area.

**Adjudicatory Hearing.** This is a public hearing to gather evidence and arrive at a decision on a proposed facility, structured like a judicial review. Interested parties present evidence to influence the final decision and are generally subject to cross examination as part of the process. Based on evaluation of the evidence presented the hearing examiner rules on the suitability of the proposed facility (granting or denying a permit) or makes a recommendation to the permitting authority on whether or not the facility should be approved.

**Informational Hearing.** This is a public hearing for dissemination of information and airing of opinions on a proposed facility. Representatives of all interest parties can make presentations and discuss areas of concern; evidence



is collected and turned over to permitting authorities for consideration; the hearing administrator presides and ensures proper procedures but does not rule on the proposed facility.

#### Appendix A.—The Interstate Agreement and EPA's Role in Analyzing and Resolving Interstate Issues

This appendix outlines the procedure through which states that claim the availability of out-of-state waste management capacity in their CAP can assure EPA of this availability. It establishes a system under which commercial management capacity will be available on a national basis to all states, but includes a process to correct possible failures of net exporting states' to reduce out-of-state waste shipments because of a current and projected lack of native waste management capacity (in the absence of economic and environmental reasons for its absence).

#### Summary

The process begins with the initial CAP submittal. Each CAP must be accompanied by the Interstate Agreement of Chapter II signed by the Governor of the state or designee. By executing the agreement, the Governor or designee indicates an awareness of the current status quo of interstate waste shipments; promises participation in the EPA process to plan, analyze, and address the interstate transport and disposal of hazardous waste; and confirms the state's willingness to carry out the activities described in the CAP. The Agency then will institute the following procedures to address interstate waste management issues:

1. After submission of the CAPs in October 1989, EPA will prepare and publish a national analysis of the current and projected interstate waste flows contained in each states' CAP.

2. Based on the results of the first CAP submissions, EPA will refine the reasonableness criteria set forth in this appendix and publish them for review and comment. The reasonableness criteria will be used, in part, to identify states showing high levels (in net terms) of waste exports possibly due to capacity shortfall in the exporting state. States may be in "violation" of the reasonableness criteria if their export volumes are encouraged by state policies, if they are sufficient to support the development and operation of a commercial facility (for a particular waste stream), or if they result from state policies that discourage the creation of in-state management capacity. Violations would not apply to states that have entered into arrangements with other states

supporting these export practices, that intend to lower waste exports through waste minimization or through new or expanded capacity, or that export waste in quantities not sufficient to support a commercial treatment or disposal facility. To help in the analysis of potential export violations, EPA will publish initial estimates of waste stream volumes sufficient to support development and operation of a new commercial management facility under acceptable practices. These estimates will be used as guidelines for further analysis and cannot, in themselves, be used to determine violations. Actual violations of the reasonableness criteria will be determined by EPA only, as described in Step 5.

3. A forum (or forums) to raise and discuss interstate issues will be convened under the auspices of EPA. This forum will be used to address the reasonableness criteria published by EPA and to identify those states that may be in violation. States will be encouraged to resolve possible violations by entering into multi-state planning efforts and by revising their initial CAP submissions. The nature of the forum (or forums) will be determined by EPA after publication of the initial CAP analysis and refinement of the reasonableness criteria.

4. If interstate issues between affected states cannot be resolved through discussion, a process for resolving such issues will be implemented under the auspices of EPA at the request of the states affected. This process may include third-party facilitation, mediation, arbitration, or other informal dispute resolution mechanisms.

5. States will be given an opportunity to revise their initial CAPs to correct possible violations of the reasonableness criteria identified in Steps 3 and 4. If, after a specified period of time, potential violations and disputes cannot be resolved, EPA—upon a petition from an affected state or on its own initiative—will conduct an adjudication (which may include fact-finding) to determine whether any state is engaging in actions violating the reasonableness criteria. If EPA concludes that the actions are not consistent with the reasonableness criteria, EPA will withdraw approval of the offending state's CAP, which may result in withholding of Superfund monies.

6. If a state continues to violate the reasonableness criteria, and such actions jeopardize an importing state's ability to assure capacity, the importing state eventually may take appropriate action to limit the offending quantity of waste from the exporting state. These

actions would not be found to be "inconsistent" under RCRA if prior approval of such actions were obtained from EPA. EPA would allow such actions only under the most narrow of circumstances.

This above process only addresses issues relating to interstate transport and disposal of waste. Compliance with this section alone does not assure adequate capacity or complete a CAP submission. Other criteria also must be fulfilled (as listed in Chapter I) to fulfill the requirements of a CAP.

#### Background

Section 104(k) of SARA requires states to assure the availability of adequate waste treatment or disposal facilities which "are within the state or outside the state in accordance with an interstate agreement or regional agreement or authority". EPA interprets this provision as providing the Agency with discretion in defining an interstate agreement that would meet the requirements of the law. Such discretion is needed to construct an agreement that takes into account the following:

- States, for the most part, do not control the amount of commercial hazardous waste management capacity available. The amount and location of waste management capacity chiefly is determined by private market decisions, which include considerations of market volumes available to the facility. States, however, can influence these decisions to expand or build new capacity by supporting policies that may either hinder or facilitate the development of management capacity in that state.

- Some states are net exporters of hazardous waste while others are net importers. But virtually all states both receive and ship some hazardous waste. For the commercial hazardous waste management industry to operate most efficiently, unreasonable barriers to the interstate flow of waste cannot be permitted. (By "state", we mean chiefly the waste generation and management industry contained in the state. Governments create waste only if the waste is generated by a government facility or if it arises from government-funded cleanups.)

- Some states that receive substantial net imports of hazardous waste believe such imports may arise partly from practices in other states that hinder the creation of their own waste management capacity. These importing states believe greater pressure should be placed on the appropriate exporting states to create the needed capacity.

- Many net exporting states do not export in quantities sufficient to support



a commercial management facility. These states must rely on out-of-state capacity or be forced to construct uneconomical facilities. The requirement that such states build new management capacity to support their own waste to assure capacity would not be appropriate.

#### Problems of Requiring Each State To Execute a Formal Agreement With Another State

In developing an approach to assuring out-of-state capacity, EPA needed to reconcile the above practical concerns against the ostensible mandate of SARA Section 104(k)(9), which requires states relying on out-of-state capacity to do so pursuant to an interstate agreement or regional authority. While most states appear to be willing to accept the status quo of interstate waste management, few—if any—appear willing to sign unconditional agreements guaranteeing that they will hold their borders open to imports of hazardous waste. The reason for this is that such agreements would hold little promise that was volumes to the importing state would, in fact, be reduced over time. Instead, by not signing such an agreement, the importing state forces the affected exporting states to reduce their exports or face potential disapproval of its CAP and, thus, loss of Superfund monies. The result might be greater amounts of Superfund monies available to the importing states that can assure capacity.

Moreover, the failure of several key states to execute a binding agreement with the states that import waste to them eventually could undermine the effectuation of the provision. Most states, even net importers, export significant quantities of waste to other states. If only a few importing states refuse to sign such agreements, it could create a series of reactions that would be difficult to sort out. (For example, in 1986, Illinois received 68,587,000 gallons of waste from 42 states and sent 21,590,000 gallons of waste to 28 states).

Finally, coupled with the above considerations is the Agency's belief that barriers to interstate waste shipments also can undermine the intent of SARA 104(k)(9) by forcing states to manage all waste created within its borders, even when it is uneconomical to do so. Such a result would obviate the efficiencies of a national market for waste management. Yet, by requiring states to execute explicit "assurances" with each other, many states with small quantities of exports could be forced to create unnecessary management capacity if they cannot obtain agreements with importing states. The Agency did not wish to sanction a

process that might encourage such a response.

#### The Benefits of Requiring States To "Sign On" to a Common Process That Assures Capacity

It was the judgement of the Agency that it was essential to bring all states fully into the program in a progressive way. The option chosen is to require states to enter into a process that results in equitable consideration of interstate issues. The agreement fashioned is one that places all states under a common system; the Agency believes the common principles that bind all states under the agreement would motivate all to sign. This is, in part, because the process associated with the agreement provides a fair mechanism for raising, discussing, analyzing, resolving, and adjudicating interstate disputes. However, to ensure that all states do sign, the Agency requires that the agreement be executed by all states exporting waste at any time over the 20-year projection horizon of the CAP. EPA considers this a necessary step toward submitting an approvable CAP.

While the agreement set forth in this Guidance is the minimum required agreement, it should be emphasized that more concrete bilateral or multi-state agreements are encouraged and are not precluded under this process. In fact, it is hoped that the process will facilitate states to engage in joint planning efforts which may eventually lead to regional agreements.

The process outlined in this appendix constitutes an attempt to reconcile all of the above-mentioned practical concerns. The process is intended to result in agreements regarding interstate movement of waste that are nonbinding between states, but satisfy the intent of the Section 104(k)(9). The consequence of failing to enter into the agreement or failing to abide by the process is that a state may lose funding under the Superfund cooperative agreements. No state can enforce the agreements other than by requesting that EPA take action. EPA's role will be to perform an initial analysis of the CAPs, refine the reasonableness criteria that will be used to assess the actions of significant exporting states, convene a forum for airing interstate issues, help set up informal mechanisms for resolving disputes, and, finally, act on petitions submitted by affected states where disputes cannot be resolved informally.

While EPA plans to facilitate the resolution of interstate issues, it will not micro-manage the disposition of waste or prescribe waste management practices in individual states. Instead, EPA's role will be limited to determining

whether a state is acting in accordance with the reasonableness criteria and, if not, whether the CAP should be disapproved. If the CAP is not approved, EPA can withhold Superfund monies as appropriate. EPA also plans only to facilitate resolution of significant disputes, when large quantities of waste are being exported and when an exporting state is not meeting the milestones in its CAP or is otherwise taking action that encourages exports at the expense of creating additional capacity.

The only actions affecting waste movement and disposition that EPA guidance would recognize as valid (pursuant to the process) are narrowly targeted actions to limit imports of hazardous waste when the importing state is in serious jeopardy of not adequately assuring capacity. Such actions may be considered a lawful exercise of police power authority as reasonably related both to avoidance of a specific harm (the potential cutoff of money necessary to clean up toxic sites) and compliance with a federal statute. In addition, the fact that such limited, narrowly targeted actions would be taken under the authority of a federal statute, as implemented by a federal agency, lends additional legitimacy to the actions. Such actions, as outlined in this appendix, would be permitted only under the most extreme of circumstances and only after resolution mechanisms have been implemented and failed.

#### Fulfilling the Intent of the Law

The agency believes the intent, if not the literal mandate, of section 104(k)(9) would be satisfied by the process chosen. By executing the agreement of Chapter I, each state would acknowledge the status quo of interstate waste shipments and would participate in a process to address disputes over access to capacity. Thus, the agreement would provide the assurances that capacity was available now and would be available in the future. The process is one that is effectuated by a federal agency pursuant to its authority to implement SARA. Thus, the agreements and the process are conceived as the implementing mechanism of EPA and do not constitute binding agreements that rise to the level of an interstate compact.

Finally, this process may provide a more effective means of resolving interstate issues than arise under RCRA and the requirement in RCRA that state programs be consistent. EPA's recent experience with this issue shows the difficulty of entering into adjudication without clearly defined criteria and



without an attempt to first discuss the real issues. The process set forth therein attempts to fill these gaps in the current RCRA regulatory scheme. The RCRA requires a regulatory decision without a process that allows full exposition of the facts relating to all of the state's activities. By contrast, the process set forth in this guidance anticipates a regulatory decision only as a last resort. Prior to any decision, there will have been a review and discussion of the entire state program, and development of specific evidence that a state is not issuing permits for new capacity despite existing markets for such capacity, and that the state's action is specifically burdening another state.

#### *The Process*

The following sections illustrate implementation of the process over a four-year time frame. Most of the key activities will begin immediately upon submission of the initial CAPs and will be in-place at the end of the first year. Many of the resolution efforts, however, will be ongoing.

#### *Initial Assurance Plan—1989*

The initial assurance submission will concentrate on each state supplying the best possible information on its current and projected waste generation and how that waste will be served by the current and projected management capacity of the state. In estimating their waste flows, states will be allowed to hold imports at current levels and continue to export waste according to current patterns if these assumptions are reasonable. States will be required to document expected exports and their disposition, but will not be expected to obtain assurances from each state.

All Governors (or their designates) will provide with their initial assurance submissions a signed agreement stating the following:

1. The government of the state is aware of the status quo of interstate waste shipments;
2. In accordance with other state agreements, the government of the state agrees to participate in the planning, analysis, and dispute resolution process designed to address interstate transport and disposal of hazardous waste as outlined in the waste capacity assurance guidelines; and
3. The government of the state intends to carry out the activities described in the assurance plan, which will include programs and/or milestones relevant to waste minimization and management of hazardous waste.

This signed agreement from the Governors, agreeing to participate in the process and acknowledging the status

quo of interstate waste movements, will serve as the interstate agreement required under section 104(k)(9). This process referred to in the agreement (as described herein) would not make any affirmative allowances for the erection of barriers to interstate movement of waste until at least four years after the first CAP submittal, and then only if specific conditions or criteria are satisfied. The initial agreement contained in this first assurance submittal will remain in effect and will be required as a condition of EPA acceptance of a state's capacity assurance plan (CAP) with regard to interstate capacity.

#### *Second Year—1990*

EPA will prepare and publish an analysis of data submitted with the initial CAPs from each state. The analysis will highlight interstate waste flows. EPA will then publish for notice and comment a refinement of the reasonableness criteria set forth in this Appendix. The refined reasonableness criteria will include guidelines published by the agency indicating waste stream volumes sufficient to support development and operation of a new commercial management facility under acceptable practices. These guidelines will be used to highlight so-called "high volume" net exports that could subject a state to further review under this process. By themselves, however, the guidelines would not be used to determine violations of the reasonableness criteria.

A forum (or forums) will be convened under the auspices of EPA to discuss EPA's analysis and any interstate issues which arise out of the comparison of waste flows against the reasonableness criteria. This forum will be used to examine further the application of all of the reasonableness criteria.

It is anticipated that this forum will identify certain state waste streams and corresponding waste management practices which should be subject to further examination. Among other outcomes, regional planning efforts will be encouraged. One important aspect of the reasonableness criteria is that a state's waste exports and waste management practices will not be deemed unreasonable if they are subject to regional planning efforts or interstate or regional agreements. It is further anticipated that in cases for which potential violations have been identified, the affected states will conduct further examinations and will attempt to discuss these problems directly with the exporting states in question. EPA also may conduct further

examination of the most potentially serious problems.

States will not be authorized to rescind the initial agreements (in the sense that EPA would not use the rescission at this time as a basis for a finding that state CAPs are unacceptable). Instead, as a result of the initial forum, EPA may, at the request of affected states, require certain states to take appropriate corrective actions (where there are clear violations of the reasonableness criteria) or provide reports of progress in meeting the milestones in order to facilitate analysis of progress over the coming year.

#### *Third Year—1991*

In the third year, the forum will be convened for a second time to consider actions over the past year to resolve interstate issues. This meeting will occur after the 1989 biennial report cycle has been completed. Progress in meeting milestones related to siting and waste minimization and otherwise reducing exported waste volumes will be examined for those states identified as violating the reasonableness criteria. Informal alternative dispute resolution mechanisms will be implemented under the auspices of EPA to develop discrete solutions between affected states.

If the interstate issues cannot be resolved by agreements worked out between the affected states within a specified period of time, EPA, on its own, or pursuant to a petition submitted by an affected state, will determine whether an "offending" state is failing to comply with the "reasonableness" criteria. EPA's determination will take into account the "offending" state's adherence to milestones set forth in the initial capacity assurance plan. If EPA determines that the "reasonableness" criteria are not being met, it will issue such a determination and indicate that if the "offending" state fails to take specified actions within a specified period of time, EPA will deem the state's capacity assurance plan to be inadequate. If the state fails to come into compliance, EPA will deem the capacity assurance plan inadequate. This finding will result in withholding of Superfund money in the year following its failure to achieve compliance.

EPA's determination that a state's capacity assurance plan is not adequate will be taken after notice published in the *Federal Register* and an opportunity for the affected state to submit comments. The final determination will be published in the *Federal Register* and will constitute final agency action, permitting the affected state to seek



judicial review in a federal district court.

#### Fourth Year and Beyond

If, despite EPA's final action to disapprove an exporting state's capacity assurance plan, the state continues to export significant quantities of waste to an "aggrieved" state, the aggrieved state may find it necessary to control imported waste from the exporting state. This situation will arise if the quantity of wastes exported into the "aggrieved" state significantly and adversely affects the ability of the "aggrieved" state to assure capacity for the waste generated within its borders. If this can be demonstrated, the "aggrieved" state may submit a revised capacity assurance plan which contains a restriction on the amount of waste imported from the exporting state, implemented through legislation or regulations. Such restrictions will only be allowed on the amount of waste specifically found to threaten the "aggrieved" state's capacity; unless, otherwise demonstrated, this amount will be defined as the excess of that received by the "aggrieved" state in 1987 (as described in the 1989 CAP of that state).

EPA, pursuant to this guidance and after notice and comment, will approve the capacity assurance plan with the restriction on imported waste if the Agency agrees with the aggrieved state's determination that—without the proposed restriction on the exporting state's waste—the importing state's ability to assure capacity would be seriously jeopardized. EPA would not find such action to be inconsistent with RCRA, regardless of what consistency criteria may be developed by EPA.

The imprimatur for the affected state to restrict imports from a particular exporting state comes under section 104(k)(9), as implemented by the guidance and also as necessary to assure safe and effective management capacity for the state. It is provided only under the most narrow of circumstances, and only as a last resort. The state taking action must demonstrate to EPA that the action is necessary for it to demonstrate adequate capacity to dispose of in-state generated wastes.

#### "Reasonableness" Criteria

The reasonableness criteria are intended to define the circumstances under which state action will be found to be inadequate to satisfy EPA's capacity assurance guidance with respect to out-of-state capacity. The criteria are intended to help identify instances in which a state might be found to place undue reliance on out-of-

state waste management capacity as a substitute for creating necessary in-state capacity. Such criteria are not intended to penalize state's that have insufficient waste volumes to support a commercial facility, that have agreements or planning efforts with other states to support such waste management patterns, or that are net exporters of waste because of in-state industry shipments to captive facilities in other states.

Within the first year of the initial CAP submission, a review panel of state, federal, industry, and other interested parties will refine the definitions and terms of the so-called "reasonableness" criteria. The reasonableness criteria will include, but not be limited to, the following principles:

1. It is unreasonable for a state that needs to create capacity (as defined below) to fail to create that capacity for whatever reason.
2. A state will be deemed to need to create capacity under the following conditions:
  - a. It is exporting significant quantities of waste (by waste stream) in excess of that being imported to and managed by the state for treatment or disposal, or it is otherwise exporting quantities that adversely affect another state's CAP;
  - b. It is economically feasible to create and maintain a commercial or public facility (including optimum use of mobile incineration technology) to dispose or treat the waste in question; and,
  - c. it is unable to demonstrate that:
    - i. It has entered into any multi-state or regional planning efforts that allow it to maintain its level of exports;
    - ii. Its failure to reduce its waste exports is caused by special environmental, health, or safety conditions significantly more serious than those existing in other states; and
    - iii. It has procedures in place that are likely to create capacity within a specified period of time.
3. "Creating capacity" means:
  - a. Reduction of waste generated in-state through waste minimization programs;
  - b. Use of out-of-state facilities pursuant to interstate or regional agreements or planning efforts; or
  - c. Construction of new or expanded waste treatment or disposal facilities.
4. For those states that export (in net terms) significant quantities of waste, it shall be considered unreasonable if the State has incentives in place to encourage in-State generators to export waste.

## ALTERNATIVE RECOMMENDATIONS ON DRAFT STATE HAZARDOUS WASTE CAPACITY ASSURANCE GUIDANCE

### Chapter I—Introduction and Overview of the Capacity Assurance Process

This document provides guidance to State officials on how to prepare a State Capacity Assurance Plan (CAP). The CAP provides the documentation necessary to provide the assurances required by Section 104(c)(9) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended (Pub. L. 96-510). This section requires each State to assure the Administrator that adequate capacity will exist to manage the hazardous waste created in the State over the next twenty years (see box below). A State's failure to submit an approved CAP by the October 1989 deadline will prohibit the State from receiving Superfund money for remedial actions until such time an assurance is approved by EPA. The availability of funds for emergency removal actions is not affected by this requirement.

"Siting.—Effective 3 years after enactment of the Superfund Amendments and the Reauthorization Act of 1986, the President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that the State will assure the availability of hazardous waste treatment or disposal facilities which—

(A) Have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated with the State during the 20-year period following the date of such contract or cooperative agreement and to be disposed of, treated, or destroyed,

(B) Are within the State or outside the State in accordance with an interstate agreement or regional agreement or authority,

(C) Are acceptable to the President, and

(D) Are in compliance with the requirements of subtitle C of the Solid Waste Disposal Act."

—Section 104(k) of the Superfund Amendments and Reauthorization Act of 1986 amending Section 104(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (commonly known as the "Superfund"). 40 U.S.C. 9604(c)(9).



### *Legislative Background on CERCLA Section 104(c)(9)*

The Congress added these requirements to CERCLA through the Superfund Amendments and Reauthorization Act of 1986 (SARA). The purpose of this provision was straightforward: Superfund money should not be spent in States that are taking insufficient steps to avoid the creation of future Superfund sites. The Congress recognized that a safe and rational hazardous waste management program for the nation depended in part of the creation of new facilities employing the most advanced technologies. While many States enacted or planned to enact siting legislation, Congress concluded that few, if any, were developing policies and siting programs that would assure continued facility capacity in the long term.

Congress stressed that a successful State siting program should recognize three key principles. First, the program should require a complete technical analysis of all proposed sites prior to their selection. Second, site selection must be accompanied by full public participation. Third, the process of site selection should find a way to transcend blanket local vetoes. The Congress further stressed, however, that merely having such programs in place would not satisfy the requirements of this section. Each State must provide assurances that their legislative program can work and will be used. The siting process may differ between States, but each program should make the best use of existing facilities in the short term and assure continued facility capacity in the long term.

Finally, Congress did not envision that every State would need to develop redundant or unneeded capacity. A site in every State is not required. In some cases, multi-State efforts may be appropriate, requiring some assurance that access exists to out-of-State facilities. Such access is to be assured through "an interstate agreement or regional agreement or authority."

In passing this statute, Congress did not explicitly address what should constitute a State assurance to EPA. Much was left to interpretation. Moreover, the nature of the data available, the interstate market, and methods to predict future waste generation demand a flexible approach in interpreting and implementing this requirement.

In EPA's view, the CAP should serve a twofold purpose. First, it should effectively demonstrate to the Agency that each State is taking measures to

ensure that the hazardous waste created within its borders is and will be effectively managed. Second, the CAP should serve as a document to educate and inform the public on the State's strategy for managing the hazardous waste generated by its industry and other sources.

### *EPA and State Responsibilities in Implementing the CERCLA 104(C)(9) Requirements*

The Agency is responsible for developing a procedure for implementing the requirements of CERCLA Section 104(c)(9). The Administrator plans to carry out this process through three major efforts: (1) Publish guidance explaining how to prepare a State Waste Capacity Assurance Plan (CAP) for submission to EPA; (2) provide technical assistance and limited financial resources to the States; and (3) review and approve the State submissions. States, for their part, are responsible for full and accurate submissions. In evaluating submissions, EPA intends to return to the States any which include volume estimates which are inconsistent with other States with whom they have import/export relationships. In this process, EPA will certainly apply a rule of reason: since many States will have reciprocal relationships with a number of other States, EPA generally, will confine its examination for consistent estimates to the top five volume import and export States for each submission.

Because of the many complex issues involved, EPA sought the advice of State officials, industry, private citizens, and public interest groups as part of developing this guidance package. The recommendations contained in this document reflect the views of these affected parties and specifically address the following problem areas:

- Data used throughout the States varies in uniformity. To help States convert their data to a uniform and consistent format for reporting purposes, EPA will provide technical assistance for States that use the New Biennial Report System, the Old Biennial Report System, or equivalent data from State reports or manifest data.

- Waste projections techniques are uncertain and under development. To accommodate the different approaches available to project waste generation, the guidance permits States to develop their own procedures as long as they meet general criteria.

- Waste minimization is a valuable waste management tool but its results are difficult to predict. To encourage States to develop waste minimization programs, the assurance process grants

maximum flexibility to States in calculating the effects of such programs on the demand for future management capacity.

- The current waste management market is multi-State, and privately-run for the most part. To allow States to effectively assure the availability of capacity in other States without executing complicated interstate agreements, the guidance requires States to resolve interstate waste management issues.

### *Evaluation Criteria To Be Used by EPA*

To comply with CERCLA Section 104(c)(9), each State must complete the reporting requirements outlined in this guidance document. The CAP submitted by the State will not be approved unless it meets the following criteria:

1. The State must submit complete and accurate information showing current generation, waste management capacity, imports, and exports.

- (a) Full and accurate submissions shall constitute those in which a State demonstrates its ability to coordinate with import and export partners in developing consistent estimates of waste volumes; as noted above, EPA will return to the States for review submissions containing inconsistencies, particularly those involving large waste volumes.

2. The State must show that its projection of waste generation and demand capacity:

- (a) Is based on existing or official projections of State economic activity or are otherwise justified by the State;

- (b) Accounts for major waste producing industries and takes into account the range of possible changes in the economic behavior of these industries;

- (c) Accounts for one-time only wastes (e.g., CERCLA or RCRA remedial corrective actions); and

- (d) Incorporates effects of waste minimization as outlined in the State's plan.

3. For States that rely on waste minimization to reduce the demand for capacity, the State must demonstrate that:

- (a) The estimated reductions in wastes are based on a sound technical analysis, such as surveys of specific industries and engineering analysis of potential reductions;

- (b) The resources committed to implementing the waste minimization strategy are consistent with the plan set forth by the State; and,

- (c) The milestones for projected accomplishments in waste minimization



are reasonable and there is a plan for action if the milestones are not met.

4. States must execute the interstate agreement set forth in Chapter II if they plan to use management capacity in other States at any time over the 20-year "assurance" timeframe.

5. For States showing capacity shortfalls in its projections, the State must meet the following requirements:

(a) It must submit a plan and milestones for creating additional capacity inside the State or otherwise show how capacity needs will be addressed through interstate or regional planning efforts;

(b) If additional capacity is to be created inside the State, the CAP must show that State and local laws, regulations, practices, and policies will not hinder the development of additional capacity, when needed, and are consistent with the proposed plan submitted under (a) above. Laws, regulations, policies, and practices that may be found to hinder development of additional capacity include, but are not limited to the following:

(i) Local preemption powers not based on environment, health, or safety concerns with no ability for the State to appeal or rectify local decisions;

(ii) Absence of a siting procedure with clearly defined steps, including opportunity for public review and comment, and clear time periods between permit review, comment, and approval/denial;

(iii) Discriminatory rules such as limits on facility size, types of waste allowed based on origin of waste, and prohibition of waste facilities not based on environmental, health, or safety considerations; and

(iv) A demonstrated history of failed efforts to create additional capacity in the presence of sufficient demand for that capacity.

(c) For States that plan to rely upon capacity outside the State to address the projected shortfall, the CAP must show that such reliance does not conflict with the plans of the State receiving the waste.

EPA expects the States to prepare and submit an assurance to the Administrator no later than October 17, 1989. EPA plans to request revised assurances every two years, in concert with the biennial report already required of TSD facilities. Thus, the first reassurance will be required in October of 1991. Each time a State enters into a cooperative agreement with EPA to obligate Superfund monies, the State must certify that their current assurance represents current policy to the best of their understanding. EPA will establish a standard certification paragraph on

compliance with CERCLA section 104(c)(9), in compliance with RCRA Subtitle C, which will appear on all CERCLA cooperative agreements for remedial action funding.

#### *Interstate Dialogue and Coordination*

EPA recognizes that many States presently depend to some extent on hazardous waste treatment and/or disposal capacity in other States. In order to meet the CERCLA section 104(c)(9) requirements for an acceptable capacity assurance, waste exported by one State for treatment and/or final disposition in another State must be acknowledged and documented by the "importing" State in its own capacity assurance plan (CAP). Therefore, States which either export or import significant amounts of waste to or from another State (or States), are advised to begin dialogue and information exchange relative to these issues well in advance of the October 19, 1989 deadline for submission of their CAPs to EPA. Such exchanges should include information on both present and projected imports and/or exports between States reasonably anticipated through the 20-year period requirement under CERCLA section 104(c)(9). Consideration should be given to the compatibility of each State's projection methodology, as well as any projected waste minimization and/or source reduction. Agreement and acceptance of the data and projections may require substantial negotiations among importing exporting States. It should be noted that after the October 17, 1989 statutory deadline failure of an exporting State to obtain such an agreement will result in the loss of remedial action funding for the exporting State unless the State can successfully conclude an equivalent interstate agreement with another State with demonstrated capacity sufficient to manage the exporters needs.

#### *Reasonable Levels of Exports*

In order to promote interstate dialogue, EPA suggests that States use the following criteria as a starting point for determining what constitutes a "reasonable" level of exports:

1. It is unreasonable for a State that needs to create capacity (as defined below) to fail to create that capacity for whatever reason.

2. A State will be deemed as needing to create capacity under the following conditions:

(a) It is exporting significant quantities of waste (by waste stream) in excess of that being imported to or managed by the State for treatment or disposal or it is otherwise exporting

quantities which adversely affect another State's CAP; and

(b) It is economically feasible to create and maintain a commercial or public facility (including optimum use of mobile incineration technology) to dispose of or treat the waste in question, and;

(c) The State is unable to demonstrate that:

(i) It has entered into any multi-State or regional planning effort which allow it to maintain its level of exports; or,

(ii) Its failure to reduce its waste exports is caused by special environmental, health, or safety considerations significantly more serious than those existing in other States; or,

(iii) It has procedures in place that are likely to create capacity within a specified period of time.

3. "Creating capacity" means:

(a) Reduction of waste generated in-State through waste minimization programs;

(b) Use of out-of-State facilities pursuant to interstate or regional agreements or planning efforts; or

(c) Construction of new or expanded waste treatment or disposal facilities.

4. For those States that export (in net terms) significant quantities of waste, it shall be considered unreasonable if the State has incentives in place to encourage in-State generators to export waste.

#### *EPA Administrative Assistance*

EPA, through the Regional offices, will provide administrative assistance to assist States in these dialogues to facilitate timely assurances. Such assistance will include convening of interstate and regional workgroups, regional import/export data access and manipulation and facilitation services. This support is already available in several Regions (specifically IV and X) and should be funded in other Regions by the end of this fiscal year. In addition, assistance is expected to be available to western States through an EPA grant to the Western Governors' Association. Several State pilot projects are also in progress, the results of which will be made available to all States to aid in completing their assurances.

#### **Chapter II—Basic Instructions for Completing the State Capacity Assurance Plan**

This chapter provides States with the basic instructions needed to complete their Capacity Assurance Plan (CAP) in accordance with this guidance document. Each chapter in the guidance provides specific instructions for



reporting information to EPA. This chapter outlines the format of the CAP, directions for completing the interstate agreement, technical assistance provided by EPA to complete portions of the CAP, and instructions for transmitting the State's final CAP to EPA.

#### *Capacity Assurance Plan Format*

The State should submit its CAP to EPA as a single document consisting of five Parts, based on the information required in the guidance document:

- Part 1 should contain the results of Chapter III of the guidance document, which requests information on current generation, management capacity, imports and exports. This chapter asks each State to demonstrate an understanding of its current hazardous waste generation, treatment and disposal system, and provides a format for all States to manipulate their data internally and report key information to EPA.

- Part 2 should incorporate the results of Chapter IV of the Guidance Document concerning State waste minimization plans. This Part will provide information on each State's use of waste minimization in the capacity assurance process. States that plan to use waste minimization to help them assure the availability of adequate management capacity must supply more detailed documentation on their on-going and planned efforts.

- Part 3 should incorporate the results of Chapter V of the Guidance Document, which requires States to project hazardous waste generation and the demand for management capacity. This chapter also requires States to estimate the amount of capacity needed in the State over the next 20 years.

- Part 4 should incorporate the results of Chapter VI of the Guidance Document, which covers State laws and procedures for creating management capacity within the State. All States showing a shortfall in management capacity in Part 3 must describe their plans for addressing this shortfall in this Part.

#### *The Interstate Agreement*

Section 104(c)(9) of CERCLA requires States to assure the availability of adequate waste treatment or disposal facilities which "are within the State or outside the State in accordance with an interstate agreement or regional agreement or authority." EPA has determined that this interstate agreement must acknowledge current as well as projected hazardous waste imports and exports and their treatment and/or disposal disposition. It is

expected that the governor or his/her designee will recognize the present waste handling practices in their State as outlined in their capacity assurance plan as developed in accordance with these documents. To the extent that those waste handling practices involve treatment and/or disposal in another State, the CERCLA section 104(c)(9) assurance can be made by the exporting State only if the importing State accepts the fact of that treatment and/or disposal within its capacity assurance plan.

States can fulfill the requirements of CERCLA section 104(c)(9) with regard to out-of-State capacity by executing an interstate agreement as provided on pages II-3, 4, and 5 of this chapter. Two types of interstate agreements are suggested. Once, a generic agreement, can be completed where there has been adequate dialogue between importing and exporting States and importing State's capacity assurance plan adequately describes its hazardous waste management system including treatment/disposal of the exporting States wastes. EPA encourages all States to negotiate generic agreements using criteria such as that recommended in Chapter 1 for determining reasonable levels of exports.

Certain groups of States may want to reach agreements that go beyond the language suggested by the generic agreement. These groups of States are encouraged to develop separate addenda or other separate agreements in addition to the generic interstate agreement that satisfy their regional concerns.

In some instances, an exporting State may be unable to obtain or negotiate a generic agreement. In this case the State should negotiate separate "one-on-one" agreements with States that have adequate excess capacity. A model "one-on-one" agreement is provided for this purpose.

#### *Generic Interstate Agreement*

Pursuant to the requirements of the section 104(c)(9) of the Comprehensive Environmental Response, Compensation, and Liability Act and the State Hazardous Waste Capacity Assurance Guidance issued by the U.S. Environmental Protection Agency pursuant thereto; and

In recognition of the fact that this State is both an importer and exporter of hazardous waste; and

In accordance with similar agreements on behalf of other State governments respecting interstate transport and disposal of hazardous waste:

The State of \_\_\_\_\_ hereby agrees as follows:

1. The government of this State acknowledges the waste management practices for the hazardous waste generated within this State as well as those hazardous wastes which are imported into this State as outlined in our documentation to the CERCLA 104(c)(9) assurance, and

2. The government of this State intends to carry out the activities described in the State's Capacity Assurance Plan, which will include programs and/or milestones relevant to waste minimization and the management of hazardous waste.

Nothing in this Agreement shall be construed to affect the existing obligation of the States in a manner that would subject this Agreement to the purview of Clause 3, Section 10, Article I of the United States Constitution.

#### *Governor or Designee*

##### *Interstate Agreement Between the States of (A) and (B)*

*Whereas* hazardous wastes are articles in interstate commerce; and

*Whereas* the United States Congress enacted Section 104(c)(9) of the Comprehensive Environmental Response, Compensation and Liability Act (hereinafter referred to as "CERCLA"), 42 U.S.C. section 9604(c)(9); and

*Whereas* section 104(c)(9) of CERCLA requires, for remedial actions to be provided after October of 1989, that States enter into contacts or cooperative agreements that provide assurances that adequate capacity exists for the destruction, treatment, or secure disposition of hazardous wastes that are generated within the State for twenty years following contracts or cooperative agreements for the revision of such actions; and

*Whereas* section 104(c)(9)(B) of CERCLA requires that such assurances reflect the availability of hazardous waste treatment or disposal facilities within the State or outside the State in accordance with an interstate agreement or Regional agreement or authority; and

*Whereas* the United States Environmental Protection Agency (hereinafter referred to as "EPA") has been delegated authority to administer section 104(c)(9) by the President of the United States; and

*Whereas* the States of (A) and (B) have prepared plans for submission to EPA (hereinafter referred to as "104(c)(9) State Hazardous Waste Capacity Assurance Plans"); and



Whereas hazardous wastes are transported between the States of (A) and (B).

**Be It Therefore Resolved and Agreed**

1. The State of (A), having evaluated the 104(c)(9) State Hazardous Waste Capacity Assurance Plan of the State of (B) finds no factual or legal obstacle to accessing and utilizing that capacity within the State of (A) described in the 104(c)(9) State Hazardous Waste Capacity Assurance Plan of the State of (B).

2. The State of (B), having evaluated the 104(c)(9) State Hazardous Waste Capacity Assurance Plan of the State of (A) finds no factual or legal obstacle to accessing and utilizing that capacity within the State of (B) described in the 104(c)(9) State Hazardous Waste Capacity Assurance Plan of the State of (A).

Signed that — day of —, 1989

Governor or Authorized Person\*  
State of (A)

Governor or Authorized Person\*  
State of (B)

**Technical Assistance Available From EPA**

EPA recognizes an adequate CAP includes a thorough understanding of current generation, management capacity, waste imports, and waste exports. This is the critical information required in Chapter III (Part 1 or the CAP) and used in all subsequent calculations concerning future waste management practices. EPA realizes that developing this information may be difficult for some States because of differences in data collection and management systems. To help States complete Chapter III of the Guidance Document, and to ensure that all States assemble data into the same format for the CAP, EPA has provided three forms of technical assistance. This assistance is located in a Technical Reference Manual, which will be issued by EPA in October, 1988.

The Technical Reference Manual will cover the following major topics:

1. Optional conversion methodologies will be detailed to allow the more than 700 RCRA waste codes to be aggregated into 17 common reporting categories used in the CAP. These conversion methodologies will allow States using the New Biennial Report, the Old Biennial Report (including comparable data obtained from State reports and

manifests), and the California UCD codes to convert their waste data into 17 common categories.

2. An optional default methodology will be described to allow States to assign the 17 waste categories to the 15 waste management categories used in the CAP. This default methodology will be based on current waste management practices; States will be free to choose different alternatives and must adjust the default methodology for when used to project future practices.

3. A procedure will be described for converting EPA-supplied data on waste management capacity in your State (by facility ID number) to the 14 waste management categories of the CAP. The facility-by-facility information will be supplied under separate cover and will include information on facility status (on-site, commercial, or captive) and capacity (currently used, currently available, and future plans). States will be required to review, correct, and assemble this information for reporting their capacity needs.

Finally, EPA will be developing computer-based programs to facilitate the calculations described in the Technical Reference Manual and will be made available in the fall of 1988.

Additional technical assistance can be obtained by using the EPA Hotline, which is available during the hours of 8:00 a.m. and 4:30 p.m. Eastern Standard Time, Monday through Friday. In addition, the EPA Regional Office serving your States has assigned several individuals to answer questions. Please consult the Technical Reference Manual for more details, including a list of individuals and phone numbers.

**Transmittal of Capacity Assurance Plan to EPA**

By Executive Order #12580, the President has delegated approval of the CERCLA section 104(c)(9) assurances to the Administrator of the U.S. Environmental Protection Agency. Using the evaluation criteria discussed in Chapter 1 as a basis, EPA regional and headquarters personnel will evaluate the Capacity Assurance Plans in making a recommendation for final agency decision.

It is expected that the Governor of each State will transmit its State's Capacity Assurance Plan and Interstate Agreement to the EPA Administrator. These documents should be transmitted to EPA on or before October 17, 1989. A suggested transmittal letter for States to use in transmitting their Capacity Assurance Plan is shown on Page II-8.

Five copies of CAP should be sent to: U.S. Environmental Protection Agency  
401 M Street, SW.

Washington, DC 20460

Attn: \_\_\_\_\_

Sample Letter to Transmit CERCLA section 104(c)(9) Capacity Assurance Plan

Dear Administrator:

Section 104(c)(9) of the Comprehensive Environmental Response, Comprehensive, and Liability Act (CERCLA) requires States to assure you that they have sufficient hazardous waste treatment and disposal capacity to take care of all wastes expected to be generated within their borders for the next twenty years.

On the basis of the Capacity Assurance Plan that I am providing you today, I can assure you that my administration has in place a comprehensive hazardous waste management system. The attached planning document will show you that:

- This State understands its hazardous waste system and interdependence with other States.
- This State has significant in-State waste management capability and/or processes in place to acquire same.
- This State has a viable waste minimization program.
- This State has not erected an legislative barriers that materially affect our ability to manage hazardous waste.
- This State has coordinated and cooperated with other States to find treatment and disposal capacity for our exported wastes.

Since this state relies on out-of-State treatment and disposal capacity, an interstate agreement addressing the availability of these facilities is also included.

Based on the foregoing, I hereby provide my assurance that my State is in compliance with CERCLA section 104(c)(9).

Sincerely

Governor

**Chapter III—Reporting the Current Status of Generation, Management Capacity, Imports, and Exports**

**Purpose**

This chapter asks each state to demonstrate an understanding of its current hazardous waste generation, treatment, and disposal system. It requires a strong technical knowledge of your state's hazardous waste management and tracking information systems, including data needed to meet federal reporting requirements. The key items to be reported are as follows:

- The type and quantity of federally regulated (under RCRA) hazardous waste generated within the state from

\* [Authorized Person means a person authorized under the law of that State to sign this agreement on behalf of that State].



both continuous industrial processes as well as one-time events, such as "batch" cleanups and RCRA and CERCLA corrective actions.

- The type and quantity of federally regulated hazardous waste shipped out-of-state.

- The type and quantity of federally regulated hazardous waste received from other states.

- The type and quantity of in-state capacity to manage RCRA-regulated hazardous waste and other waste not regulated by the EPA that consumes the state's hazardous waste management capacity, including state-regulated waste and non-hazardous waste.

Much of the information developed in this chapter will serve as a baseline for projecting future waste generation and disposal patterns. For example, information developed on the unused capacity available at in-state facilities will be useful when assessing future capacity needs. Similarly, current patterns of waste imports and exports can be used to project future behavior.

#### General Instructions

This chapter provides guidance to states on their responsibilities for reporting information on current waste generation, handling, and disposition. Personnel completing this chapter should consult the separate *Technical Reference Manual* for more detailed instructions on sources of data, data manipulation, and translation of raw data into the reporting formats provided in this chapter.

The following worksheets must be completed to fulfill the minimum requirements of Part I of the CAP:

- Worksheet III-1 summarizing in-state generation of 17 types of RCRA-hazardous waste.

- Worksheet III-2 summarizing in-state waste management capacity.

- Worksheets III-3, III-4, III-5, and III-6 reporting the demands imposed by each of the 17 types of hazardous waste on each of the 15 waste management categories (as applicable) in total and for on-site, off-site captive, and commercial facilities.

- Worksheet III-7 providing detail on waste exports.

- Worksheet III-8 providing detail on waste imports.

States may develop their own report forms (computer-driven reports are satisfactory) but they must follow the general formats of the worksheets listed above. Other worksheets and interim results may be included in the CAP at the discretion of the state unless otherwise noted.

Only RCRA-regulated wastes are to be reported in the Worksheets. If a state

compiles figures for state-regulated waste, they should not be reported in the Worksheets submitted as part of the state CAP. Similarly, although a state may wish to track such quantities separately, the waste generated by small quantity generators (less than 1000 kilograms of waste per month) should not be entered into the Worksheets to be submitted in a state's CAP.

The individual or individuals responsible for completing this chapter should be thoroughly familiar with both state and federal hazardous waste reporting systems. In almost all states, these individuals will be part of the state's RCRA program office. However, staff from the state's Superfund office or the equivalent EPA regional Superfund Office must be consulted to obtain information concerning site cleanups.

Technical assistance is available from EPA in several forms. A hotline at the Agency is available during the hours of XX and XX Eastern Standard Time, Monday through Friday. In addition, the EPA regional office serving your state has assigned several individuals to answer questions; names and addresses are provided in the *Technical Reference Manual*. EPA has provided direct technical assistance through regional efforts to coordinate compliance with SARA section 104(k). If states are unaware of these on-going initiatives, they should contact the RCRA coordinators in their regional offices for additional information.

#### Technical Reference Manual

The *Technical Reference Manual* that accompanies this guidance is designed to help extract and manipulate raw data from Biennial Reports and similar state sources and produce reports for inclusion in a state's CAP. It provides four sets of instructions, one of which will be applicable to your state, based on whether your state computerizes the Biennial Report of the equivalent data and whether your state uses the old or new Biennial report forms (or equivalent data).

#### Evaluation Criteria

The Agency plans to judge this document primarily on the accuracy of the data and supporting material used to complete the worksheets. In most cases—unless otherwise noted by the state—EPA expects the waste generation data contained in the worksheets to correspond with information obtained by EPA through its major reporting system, the Biennial Report. The Agency recognizes that differences will exist, however, between the state and federal reporting systems. States showing wide disparity between

the amount of waste reported for the CAP and that reported to meet other federal requirements may be asked for more details.

EPA plans to provide individualized state reports with detail on hazardous waste management capacity in that state as reported in the agency's recent *Treatment, Storage, Disposal, and Recycling Survey* (TSDR). This will allow states to report consistent and relatively accurate baseline information on waste management capacity. Recognizing that some information from the TSDR survey may be up to three years obsolete at the time of the first CAP, states are encouraged to check these data and augment or correct them before presenting them in the CAP. Any corrections should be documented with a simple narrative discussion of changes.

#### Reporting Waste Generation

Most states now report the generation of hazardous waste by EPA waste code. More than 700 waste streams comprise EPA's list of regulated industrial residuals. Two states—California and Washington—report waste flows using a more aggregated set of waste codes developed at the University of California, Davis (these comprise the so-called UCD codes). For purposes of capacity assurance, all waste streams are to be grouped into 17 SARA waste types, which provide sufficient information for assignment to management methods.

Tables XX, XX, and XX of the *Technical Reference Manual* provide conversion factors to aggregate the EPA and UCD waste codes into this new waste type system. These tables match waste streams in either the EPA or UCD categories to the capacity assurance waste streams on the basis of waste phase (liquid, sludge, or solid) and major constituent (organic components, metals, halogenated compounds). Several miscellaneous categories convert directly.

States using the new 1987 Biennial Report forms should use the appropriate tables and procedures described in the *Technical Reference Manual* to transfer EPA waste codes into their 17-waste type equivalent. This method uses the data on waste stream characteristics in conjunction with the designated EPA waste code to create a relatively precise mapping procedure.

States using the old Biennial Report forms should use a different set of tables and procedures presented in the *Technical Reference Manual* to convert EPA waste codes into the 17 SARA waste types. These conversions are



generally considered less precise because less is known about waste stream characteristics. Where necessary, the procedures use a national profile of waste characteristics to facilitate the conversion.

Table XX of the *Technical Reference Manual* maps UCD waste codes into the capacity assurance waste streams based on waste phase and major constituent.

#### Waste Streams To Be Reported

States should report only RCRA-regulated waste in the worksheets that present waste generation. States need not report the following when describing waste generation: waste volumes that are regulated only by state law; wastes generated and handled through exempt onsite NPDES processes; exempt onsite in-process recycling (closed loop); exempt onsite treatment and discharge to municipal treatment works; direct discharge to publicly owned treatment works without treatment; and exempt onsite recycling through stills. For planning purposes, states may wish to account for these or other types of regulated waste, but they should include such wastes in separate forms from those used to report RCRA-only regulated waste.

#### Sources of Data To Report Waste Generation

For purposes of the 1989 assurance, all states should use the 1987 Biennial Report or the equivalent data elements collected in state reports to estimate 1987 calendar year generation of these 17 waste types. While availability will vary from state-to-state, equivalent sources of data include state surveys of generators, waste management facility inventories, state-modified biennial report forms, or waste manifest reports.

#### Establishing A Base Year

The EPA requests that states use 1987 as the base year to report waste generation. However, if a state has more accurate data for 1985 or 1986 and feels that these data more precisely represent waste generation in their state (because, for example, the state spent considerable resources to collect and analyze that data), they should present these figures and identify the alternate base year. States that choose an alternate base year need not estimate waste generation in 1987.

#### Units to Report Waste Generation

All waste quantities should be reported in tons per year. Waste expressed in volumetric terms, such as gallons, should be multiplied by the density of the waste in question (tons per gallon, for example) to yield the

most accurate conversion into tons. Those states using the new Biennial Report forms will find density information for each waste stream in form GM of Package B, Section III, Question D. In the absence of exact density characteristics, states may use the information presented in the *Technical Reference Manual* (Table XX, based on the density of water) to convert from volume into tons. Table XX also provides several common mass-to-mass conversion factors.

#### Instructions for All Worksheets

A prototype state hazardous waste generation and handling system is depicted in Figure III-1. States should quantify the waste flows, for each of the 17 capacity assurance waste types, for each of the boxes presented in Figure III-1. Waste quantities should be reported in the worksheets noted below the boxes on the figure. On-site handling, for example, should be reported in Worksheet III-4; all exports should be summarized in Worksheet III-7. Each worksheet is introduced in a general sense in this chapter. The *Technical Reference Manual* describes procedures to complete each worksheet from raw data.

The *Technical Reference Manual* is divided into four sections, based on whether a state computerizes Biennial Report data or not and whether a state is using the old or new Biennial Report forms for the 1987 reporting cycle. States with computerized processing of new Biennial Report data should consult Chapter 1 of the *Technical Reference Manual*. These states will be directed to ensure that their Biennial Report data are arranged in a standard format, consistent with the specifications of the Biennial Report Data System. Once so arranged, these states can access EPA-provided software that automatically generates all of the required worksheets in their proper formats. Because of the richness of the data collected under the new reporting system, EPA's capacity assurance software will enable states to complete many optional analyses (consult the *Technical Reference Manual* for details).

States with computerized old Biennial Report data should consult Chapter 2 of the *Technical Reference Manual*. They will be directed to follow a similar computer-driven procedure to complete the Worksheets III-1 through III-8. Because the data are generally more limited in the old Biennial Reporting system, fewer optional analyses will be available.

States with manual processing of new Biennial Report data should consult Chapter 3 of the *Technical Reference*

*Manual*. Simplified procedures will be presented to work directly from the Biennial Report forms themselves. These states face perhaps the most time consuming task in completing the current generation and handling worksheets.

States that process old Biennial Report data manually should consult Chapter 4 of the *Technical Reference Manual*. A similar set of simplified procedures will help states make the linkage between raw data and the completed worksheets.

States for which Biennial Report data collection and processing is handled by the appropriate EPA regional office should contact the regional EPA Biennial Report coordinator to determine the applicable set of instructions to follow.

For each of the four sets of the instructions, the *Technical Reference Manual* describes methods to ensure that all states (except as noted below) are able to complete the following types of data manipulations:

- Translating Biennial Report waste codes into 17 waste types;
- Translating UCD waste codes into 17 waste types;
- Translating TSDR Survey and Biennial Report waste management codes to 15 management categories;
- Matching SARA waste types to SARA management categories based either on a national profile or new Biennial Report data;
- Separating one-time waste generation from recurrent generation based on new Biennial Report data;
- Presenting both old and new Biennial Report data in the formats specified in Worksheets III-1 through III-8;
- Sorting of exported waste by waste type;
- Sorting of exported waste by management category;
- Summarizing imported waste by state of origin and management category; and
- Summarizing exported waste quantities by type of waste and state receiving waste.

In addition to these manipulations, the *Technical Reference Manual* provides flow diagrams describing the logic used to abstract data from both the old and new Biennial Reports and report waste quantities as (1) generated and managed onsite, (2) generated onsite and managed offsite, or (3) imported for management in state.

#### Instructions for Worksheet III-1

Worksheet III-1 asks states to summarize total in-state generation of



RCRA-regulated waste. Total generation is comprised of primary generation (waste by-products of manufacturing processes) and secondary generation (waste by-products of waste treatment processes). While states need not draw this distinction in the worksheet, states accessing EPA's capacity assurance software will be able to generate a separate worksheet for each component.

Worksheet III-1 also asks states to separate total generation into recurrent and one-time waste quantities. Recurrent wastes include both primary and secondary streams attributable to on-going industrial activity. One-time wastes include those that result from isolated events such as equipment cleaning or decommissioning, site cleanup, or off-spec product disposal. Only states using the new Biennial Report forms will be able to separate recurrent from one-time waste generation. States using the old Biennial Report forms, which do not directly support such an analysis, should estimate one-time generation to the best of their ability, following instructions in the *Technical Reference Manual*. The *Technical Reference Manual* presents both computerized and manual procedures to assist in this separation.

#### *Instructions for Worksheet III-2*

Worksheet III-2 asks states to summarize the waste handling capacity currently available in their state. EPA will supply all the necessary figures to

complete this worksheet for the 1989 CAP. Because the basis for EPA's data, however, are the results of the 1986 National TSDR Survey, some capacity figures may be obsolete. It is the state's responsibility to determine whether data supplied by EPA are appropriate for use in the CAP. Therefore, states should use their own capacity figures if they represent a more complete assessment of capacity than the EPA data. States should briefly explain in footnotes to the appropriate worksheets any differences between more recent capacity data and those supplied by EPA.

In subsequent years, states will be responsible for collecting all capacity data as part of their normal biennial reporting requirements.

#### *Instructions for Worksheets III-3 Through III-6*

Together, Worksheets III-3 through III-6 constitute the core data describing a state's current hazardous waste management system. In these four worksheets, states are asked to link waste generation to demand for in-state waste management capacity. Waste exports and the effect of waste imports also must be shown, and four types of management capacity must be examined: total in-state; in-state, on-site; in-state, captive; and in-state commercial. Completing these worksheets requires numerous data transactions; states should consult the *Technical Reference Manual* for

detailed instructions on their completion.

For convenience, Worksheets III-3 through III-6 also present a separate capacity block to display current and planned future capacity figures. For the 1989 CAP, all capacity data will be supplied by the EPA in individual state reports. Thereafter, states will be expected to collect these data as part of the normal biennial reporting process.

The "exports" column on these worksheets summarizes waste residuals generated as a by-product of waste management processes and exported for further management at out-of-state facilities.

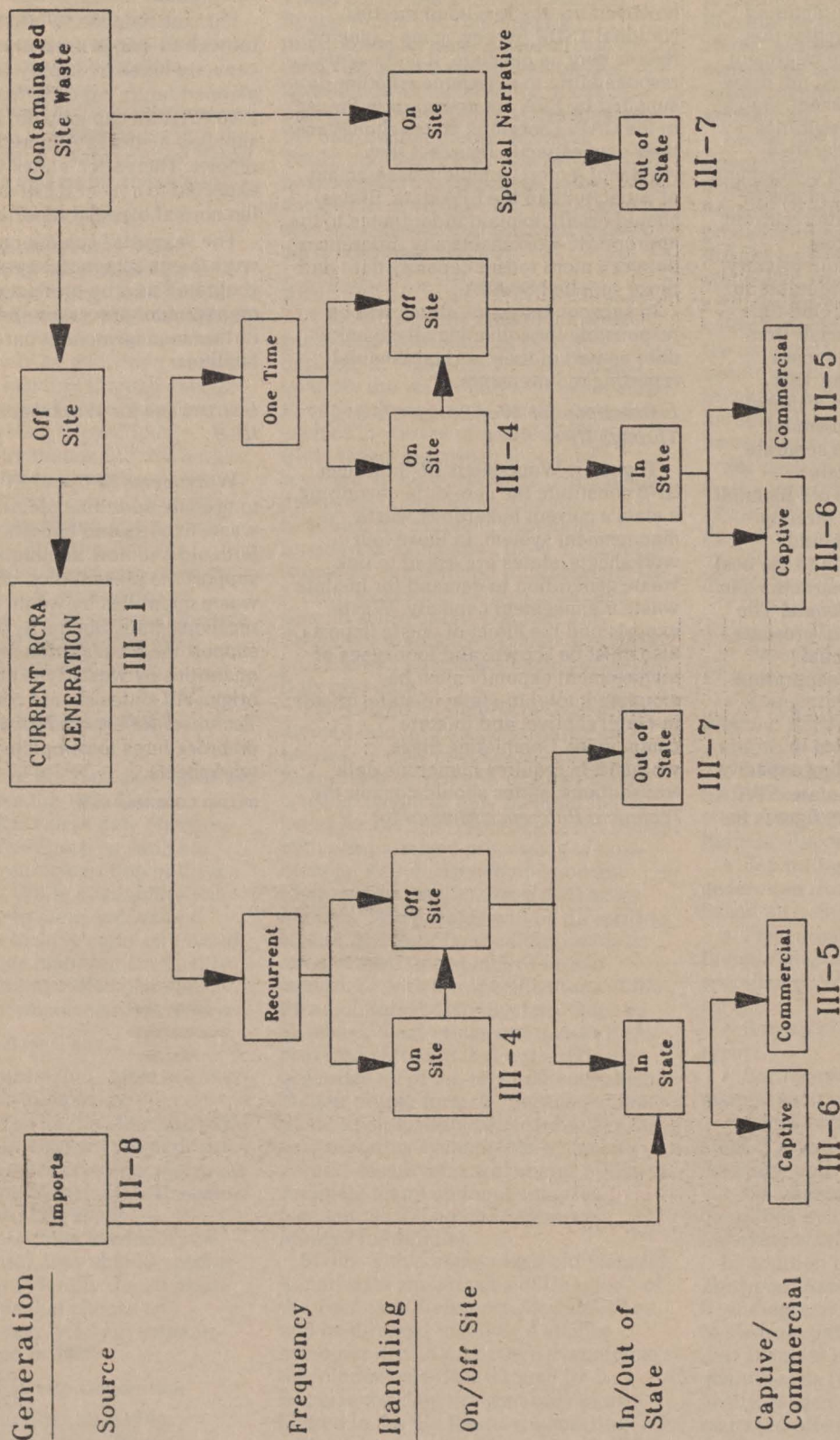
#### *Instructions for Worksheets III-7 and III-8*

Worksheets III-7 and III-8 ask states to provide additional detail on their waste exports and imports, respectively. Both old and new Biennial Reports support the presentation of exported waste quantities by waste type and receiving state. Similarly, both reports support the presentation of waste import quantities by waste type and state of origin. All states should consult the *Technical Reference Manual* for details on procedures to complete these worksheets.

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Figure III-1. Prototypical State Waste Management System





## WORKSHEET III-1.—SUMMARY OF IN-STATE GENERATION OF WASTE STREAMS IN 1987

[Thousands of tons/year]

Waste Types	One-Time Generation	Recur-rent Generation	Total Generation
1. Contaminated Soil .....			
2. Halogenated Solvents .....			
3. Nonhalogenated Solvents .....			
4. Halogenated Organic Liquids .....			
5. Nonhalogenated Organic Liquids .....			
6. Organic Liquids, NEC* .....			
7. Mixed Organic/Inorganic Liquids .....			
8. Inorganic Liquids with Organics .....			

## WORKSHEET III-1.—SUMMARY OF IN-STATE GENERATION OF WASTE STREAMS IN 1987—Continued

[Thousands of tons/year]

Waste Types	One-Time Generation	Recur-rent Generation	Total Generation
9. Halogenated Organic Solids/Sludges .....			
10. Nonhalogenated Organic Solids/Sludges .....			
11. Organic Solids/Sludges NEC* .....			
12. Inorganic Liquids with Metals .....			
13. Inorganic Liquids, NEC* .....			
14. Inorganic Solids/Sludges with Metals .....			

## WORKSHEET III-1.—SUMMARY OF IN-STATE GENERATION OF WASTE STREAMS IN 1987—Continued

[Thousands of tons/year]

Waste Types	One-Time Generation	Recur-rent Generation	Total Generation
15. Inorganic Solids/Sludges, NEC* .....			
16. Mixed Inorganic/Organic Solids/Sludges .....			
17. Other Wastes, NEC* .....			
Total .....			

\* NEC = Not Elsewhere Classified.

<sup>b</sup> Other wastes include explosives, other highly reactives, radioactive/hazardous mixed wastes, gases, lab packs, and PCBs mixed with RCRA waste. Please present each of these waste streams individually on a separate line if their waste quantity exceeds 5 percent of the total state waste quantity.

WORKSHEET III-2.—SUMMARY OF IN-STATE WASTE MANAGEMENT PRACTICES (1987 CAPACITY IN THOUSANDS OF TONS)<sup>a</sup> Capacity

Management Category	Capacity			Remaining Capacity After 1987
	Utilized	Maximum	Available	
1. Metals Recovery .....				
2. Solvents Recovery .....				
3. Other Recovery .....				
4. Incineration—Liquids .....				
5. Incineration—Solids/Sludges .....				
6. Energy Recovery .....				
7. Aqueous Inorganic Treatment .....				
8. Aqueous Organic Treatment .....				
9. Sludge Treatment .....				
10. Other Treatment .....				
11. Stabilization .....				
12. Land Treatment .....				
13. Landfill .....				
14. Deep-Well Injection .....				
15. Other Disposal .....				

<sup>a</sup> All data provided by EPA for the 1989 CAP.



# Worksheet III-3: Summary of All In-State Waste Management Activities in 1987

WASTE TYPES	MANAGEMENT CATEGORIES																	
	Generation	Metals recovery	Solvents recovery	Other recovery	Incineration -- Liquids	Incineration -- Sludges/Solids	Energy recovery	Aqueous inorganic treatment	Aqueous organic treatment	Sludge treatment	Other treatment	Stabilization	Land treatment	Landfill	Deep-well injection	Other disposal	Exports	TOTAL
Contaminated soil																		
Halogenated solvents																		
Nonhalogenated solvents																		
Halogenated organic liquids																		
Nonhalogenated organic liquids																		
Organic liquids, NECA																		
Mixed organic/inorganic liquids																		
Inorganic liquids w/organics																		
Halogenated organic solids/sludges																		
Nonhalogenated organic solids/sludges																		
Organic solids/sludges, NEC																		
Inorganic liquids w/metals																		
Inorganic liquids, NEC																		
Inorganic solids/sludges w/metals																		
Inorganic solids/sludges, NEC																		
Mixed organic/inorganic solids/sludges																		
Other wastes, NEC b																		
TOTAL																		
Imports																		
GRAND TOTAL																		

## CAPACITY DATA - TSDR SURVEY

Utilization 1985																	
Available 1986																	
Future available 1989																	

- a) Not Elsewhere Classified  
b) Including explosives, other highly reactives, radioactive/hazardous mixed, gases, lab packs, & PCBs mixed with RCRA wastes.



# Worksheet III-4: In-State, On-Site Waste Management Activities in 1987

WASTE TYPES	MANAGEMENT CATEGORIES																	
	Generation	Metals recovery	Solvents recovery	Other recovery	Incineration -- Liquids	Incineration -- Sludges/Solids	Energy recovery	Aqueous inorganic treatment	Aqueous organic treatment	Sludge treatment	Other treatment	Stabilization	Land treatment	Landfill	Deep-well injection	Other disposal	Exports	TOTAL
Contaminated soil																		
Halogenated solvents																		
Nonhalogenated solvents																		
Halogenated organic liquids																		
Nonhalogenated organic liquids																		
Organic liquids, NECA																		
Mixed organic/inorganic liquids																		
Inorganic liquids w/organics																		
Halogenated organic solids/sludges																		
Nonhalogenated organic solids/sludges																		
Organic solids/sludges, NEC																		
Inorganic liquids w/metals																		
Inorganic liquids, NEC																		
Inorganic solids/sludges w/metals																		
Inorganic solids/sludges, NEC																		
Mixed organic/inorganic solids/sludges																		
Other wastes, NEC <sup>b</sup>																		
TOTAL																		
GRAND TOTAL																		

## CAPACITY DATA - TSDR SURVEY

Utilization 1985																		
Available 1986																		
Future available 1989																		

a) Not Elsewhere Classified

b) Including explosives, other highly reactives, radioactive/hazardous mixed, gases, lab packs, &amp; PCBs mixed with RCRA wastes.



# Worksheet III-5: In-State, Captive Waste Management Activities in 1987

WASTE TYPES	MANAGEMENT CATEGORIES													
	Generation	Metals recovery	Solvents recovery	Other recovery	Incineration -- Liquids	Incineration -- Sludges/Solids	Energy recovery	Aqueous inorganic treatment	Aqueous organic treatment	Sludge treatment	Other treatment	Stabilization	Land treatment	Landfill
TOTAL														
Exports														
Other disposal														
Deep-well injection														
Landfill														
Land treatment														
Stabilization														
Other treatment														
Sludge treatment														
Aqueous organic treatment														
Aqueous inorganic treatment														
Energy recovery														
Incineration -- Sludges/Solids														
Incineration -- Liquids														
Other recovery														
Solvents recovery														
Metals recovery														
Generation														
Contaminated soil														
Halogenated solvents														
Nonhalogenated solvents														
Halogenated organic liquids														
Nonhalogenated organic liquids														
Organic liquids, NEC <sup>a</sup>														
Mixed organic/inorganic liquids														
Inorganic liquids w/organics														
Halogenated organic solids/sludges														
Nonhalogenated organic solids/sludges														
Organic solids/sludges, NEC														
Inorganic liquids w/metals														
Inorganic liquids, NEC														
Inorganic solids/sludges w/metals														
Inorganic solids/sludges, NEC														
Mixed organic/inorganic solids/sludges														
Other wastes, NEC <sup>b</sup>														
TOTAL														
Imports														
GRAND TOTAL														

## CAPACITY DATA - TSDR SURVEY

Utilization 1985														
Available 1986														
Future available 1989														

a) Not Elsewhere Classified

b) Including explosives, other highly reactives, radioactive/hazardous mixed, gases, lab packs, &amp; PCBs mixed with RCRA wastes.



# Worksheet III-6: In-State, Commercial Waste Management Activities in 1987

WASTE TYPES	MANAGEMENT CATEGORIES													
	Generation	Metals recovery	Solvents recovery	Other recovery	Incineration - Liquids	Incineration - Sludges/Solids	Energy recovery	Aqueous inorganic treatment	Aqueous organic treatment	Sludge treatment	Other treatment	Stabilization	Land treatment	Landfill
TOTAL														
Exports														
Other disposal														
Deep-well injection														
Landfill														
Land treatment														
Stabilization														
Other treatment														
Sludge treatment														
Aqueous organic treatment														
Aqueous inorganic treatment														
Energy recovery														
Incineration - Sludges/Solids														
Incineration - Liquids														
Other recovery														
Solvents recovery														
Metals recovery														
Generation														
Contaminated soil														
Halogenated solvents														
Nonhalogenated solvents														
Halogenated organic liquids														
Nonhalogenated organic liquids														
Organic liquids, NEC <sup>a</sup>														
Mixed organic/inorganic liquids														
Inorganic liquids w/organics														
Halogenated organic solids/sludges														
Nonhalogenated organic solids/sludges														
Organic solids/sludges, NEC														
Inorganic liquids w/metals														
Inorganic liquids, NEC														
Inorganic solids/sludges w/metals														
Inorganic solids/sludges, NEC														
Mixed organic/inorganic solids/sludges														
Other wastes, NEC <sup>b</sup>														
TOTAL														
Imports														
GRAND TOTAL														

## CAPACITY DATA - TSDR SURVEY

Utilization 1985														
Available 1986														
Future available 1989														

a) Not Elsewhere Classified

b) Including explosives, other highly reactives, radioactive/hazardous mixed, gases, lab packs, &amp; PCBs mixed with RCRA wastes.

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**WORKSHEET III-7.—SUMMARY OF EXPORTED WASTE QUANTITIES IN 1987 BY WASTE TYPE AND RECEIVING STATE**

[In thousands of tons]

Waste Types	Receiving State (List Each Relevant State)
1. Contaminated Soil	
2. Halogenated Solvents	
3. Nonhalogenated Solvents	
4. Halogenated Organic Liquids	
5. Nonhalogenated Organic Liquids	
6. Organic Liquids, NEC*	
7. Mixed Organic/Inorganic Liquids	
8. Inorganic Liquids with Organics	
9. Halogenated Organic Solids/Sludges	
10. Nonhalogenated Organic Solids/Sludges	
11. Organic Solids/Sludges NEC*	
12. Inorganic Liquids and Metals	
13. Inorganic Liquids, NEC*	
14. Inorganic Solids/Sludges with Metals	
15. Inorganic Solids/Sludges, NEC*	
16. Mixed Inorganic/Organic Solids/Sludges	
17. Other Wastes, NEC*	

\*NEC=Not Elsewhere Classified.

\*Other wastes include explosives, other highly reactive, radioactive/hazardous mixed wastes, gases, lab packs, and PCDs mixed with RCRA waste. Please present each of these waste streams individually on a separate line if their waste quantity exceeds 5 percent of the total state waste quantity.

**WORKSHEET III-8.—SUMMARY OF IMPORTED WASTE QUANTITIES IN 1987 BY MANAGEMENT CATEGORY AND STATE OF ORIGIN**

[In thousands of tons]

State of Origin	Tons Utilized	Waste Management Category (List all Relevant Categories)

**Definitions Section**

**Available Capacity.** The amount of waste which a treatment, storage, disposal, or recovery facility determines it can process within a single reporting year, or the amount allowed by all relevant EPA permits, whichever is less.

**Captive Management Facility.** Any treatment, storage, disposal, or recovery unit, process, or operation that is used exclusively to manage the waste produced by another operating unit or

units under the same ownership of any facility from which it receives waste.

**Commercial Management Facility.** Any hazardous waste treatment, storage, disposal, or recovery unit, process, or operation that is generally available to manage the waste of other facilities and is not under the ownership of any facility from which it receives waste.

**Equivalent State Data.** This phrase refers to common state data, derived from official surveys or manifests, that use the RCRA waste codes to report generation and capacity information. This data is similar to that collected under the old Biennial Report.

**Future Available Capacity.** The amount of waste a treatment, storage, disposal, or recovery facility determines it can process within a prescribed time period.

**New Biennial Report.** This refers to the revised EPA reporting system, issued for the 1987 reporting cycle. States may choose whether or not to use the new Biennial Report. New information required by the 1987 Biennial Report include data on waste stream constituents, details on a state's waste minimization activities, and facility capacity information.

**Old Biennial Report.** This refers to the current official EPA reporting system, last used by all states in 1985. Data requested from the states included quantities of waste generated and amounts of waste treated, stored, or disposed. The same data are still required for the 1987 reporting cycle as minimum requirements.

**On-site Management.** Any hazardous waste not transferred from the site of its generation for treatment, storage, or disposal. By definition, such facilities are captive.

**Utilized Capacity.** The actual amount of waste managed by a treatment, storage, disposal, or recovery system within a single year.

**Chapter IV—State Waste Minimization Plans**

**Purpose**

The purpose of this chapter is to obtain information on each state's use of waste minimization in the capacity assurance process. (For the CAP definition of waste minimization see the Definitions Section at the end of the Chapter.) While the Agency believes a waste minimization program is a key step toward sound hazardous waste management, EPA recognizes that some states may choose to assure adequate capacity without claiming waste reduction benefits. These states must supply only brief information on their

ongoing or planned waste minimization efforts. Such information will be evaluated for completeness only; EPA will not evaluate the waste minimization programs of these states.

States that plan to use waste minimization to help them assure the availability of adequate management capacity must supply documentation on their ongoing and planned efforts. These states must describe the overall strategy of their programs, how they plan to account for waste minimization in their waste generation projections, and how these programs might affect waste generation for the projection years.

**General Instructions**

To complete the requirements of this chapter, states should respond to the questions contained in the attached forms. States should copy and complete the appropriate forms and include them—along with additional documentation—in their CAP. Not all forms must be completed.

States not using waste minimization programs to reduce capacity demand must complete the following form:

**Form I: Legislative Authority.** This form requests information on the present legislative authority for a waste minimization program, its general make up, funding, staffing, and any anticipated legislative or programmatic changes.

States that anticipate using waste minimization programs to reduce capacity demand must complete Form I and the following forms:

**Form II: Waste Minimization Reduction Estimates.** This form requests detailed information on the state's anticipated effect of state and industrial waste minimization efforts, technical basis of these estimates, and measures of effectiveness.

**Form III: Program Components Descriptions.** This form requests more detailed information on the individual components that comprise the state's waste minimization program.

The information requests in Forms II and III will enable the EPA to assess the reasonableness of the state's proposed goals and activities and to monitor the progress of the state's programs.

A glossary of the terms used to describe the waste minimization program components is contained in the Definitions Section at the end of the chapter. In addition, technical assistance is available from EPA in several forms. A Hotline at the Agency is available during the hours of XX and XX Eastern Standard Time, Monday through Friday. In addition, the EPA Regional Office serving your state has



assigned several individuals to answer questions. Please consult the *Technical Reference Manual* for more details, including a list of individuals and phone numbers.

#### Evaluation Criteria

EPA plans to evaluate each state's waste minimization plan differently. For states not choosing to incorporate any waste minimization estimates into projections of capacity need, the Agency will simply review the state's submittal for accuracy and completeness. In these cases, the Agency will make no judgment on the adequacy of the particular waste minimization program operated by the state, if any such program is operating or planned.

For states that rely on waste minimization to reduce the demand for waste treatment capacity, the Agency must conduct a more detailed evaluation. For these states, the following must be demonstrated in the CAP.

- The estimated reduction in waste are based on a sound technical evaluation of the potential effects of waste minimization in your state. This does not require a technical analysis of waste minimization potential but an examination from available information to determine how it may apply to your state.
- The resources committed to implementing the waste minimization strategy are consistent with the plan set forth by the states; and,
- The activities for projected accomplishments in waste minimization are reasonable and there is a plan to implement these activities.

#### Form I: Legislative Authority

All states must fill out this form. States should copy and complete the form and include it—along with additional documentation—in Part 2 of their CAP. Please attach additional information if more space is needed to answer any question.

Name of Respondent \_\_\_\_\_  
Telephone number \_\_\_\_\_  
Address \_\_\_\_\_

1. Does legislative authority exist to implement a waste minimization program in your state? If authority exists through general broad authority, please answer yes and site the authority if known.

— Yes — No?

1a. If yes, what are the titles of the legislation and when was it enacted?

1b. Is future legislation anticipated and when does the state plan to have it enacted?

2. Indicate which of the following waste minimization program components are specifically in use or authorized in your state:

In use	Authorized	
_____	_____	Technical Assistance
_____	_____	Economic Incentives
_____	_____	Waste Exchange
_____	_____	Research and Development
_____	_____	Regulatory Requirements
_____	_____	Education
_____	_____	All programs are authorized under a broad legislative enactment
_____	_____	Other:

3. In your state, are there any pending statutes, or regulations relating to waste minimization that are expected to be enacted within the next two years?

— Yes — No?

3a. Please briefly describe the anticipated changes and their expected impacts on waste minimization in your state.

4. What administrative agency or agencies implement your state's waste minimization program (list all applicable agencies and the waste minimization component they are responsible for).

Agency \_\_\_\_\_

Component \_\_\_\_\_

5. What is the amount of funding received from the following sources (in thousands of dollars) for your waste minimization program?

- General revenues
- Dedicated taxes (e.g. waste end, feedstock)
- Tipping fees
- Federal Grants
- Other

6. Please estimate the number of person-years of staff supported by the state working on waste minimization.

- State professionals on staff
- Consultants
- Other

7. Do you plan to show any effect on future waste management capacity demand from waste minimization activities in your state?

— Yes — No?

If Yes Proceed to Form II, Waste Minimization Reduction Estimates.

If No Stop Here

The Waste Minimization Portion of the Capacity Assurance Submittal is Completed.

Form II. Waste Minimization Reduction Estimates

Only those states that anticipate incorporating waste minimization estimates in their capacity projections must complete this form. States should copy and complete the form and include it—along with additional documentation—in Part 2 of their CAP. Please attach additional information if more space is needed to answer any question.

Name of Respondent \_\_\_\_\_  
Telephone number \_\_\_\_\_  
Address \_\_\_\_\_

1. Please estimate, using Worksheet IV-1, the amount of waste expected to be reduced (in tons or percent reduction) by waste minimization for each of the 17 waste types of Chapter III for projection years 1989, 1995, and 2009. These estimates should illustrate how you plan to incorporate waste minimization into your waste projections of Chapter V. They should not include anticipated changes in production rates, but should show only those reductions based on waste minimization efforts.

2. Please briefly describe the basis of your technical estimates. A list of bibliographic references and a short narrative describing how they were used is sufficient. Examples of appropriate material that might be used to develop waste minimization estimates include:

- State surveys of waste generation trends.
- Waste minimization plans prepared by industry in your state (Please describe or include these plans).
- Reports from Advisory Councils on the potential effects of waste minimization for the state.
- Reports from Federal Agencies and Trade and Technical Associations estimating trends in waste minimization applicable to the industries in your state.
- Engineering studies and analysis of potential waste stream changes applicable to industries in your state.
- Programs conducted by non-state agencies such as non-profit organizations that affect the industries in your state

3. How do you intend to measure the effectiveness of your Waste Minimization Program? (In addition to the information provided in the Biennial Report, indicate which of the following do you plan to evaluate to determine the effectiveness of your waste minimization program.)

- No other measures besides that obtained from EPA's biennial report
- Number of information requests handled
- Number of industries/plants participating
- Savings to industry (cost ratios)
- Change in waste quantity generated



—Change in ratios of waste generated per unit product  
—Other

4. How will you acquire this information?  
—By examining waste minimization program records  
—By conducting industry surveys  
—New EPA Biennial Report  
—By examining state regulatory files  
—Other

5. Briefly describe your communication strategy with the industrial community.

6. In addition to your waste reduction estimates, are there any other activities in your state (announced programs by one or more key industries to reduce waste, pending legislation or regulations, component implementation schedule) that might be useful in evaluating your waste minimization program?

Date	Activity

If You Have Shown Waste Reduction Estimates Based on the Effects of Your Waste Minimization Program, Proceed to Form III, Program Component Descriptions.

### Form III: Program Component Descriptions

Only those states that anticipate incorporating waste minimization estimates in their capacity projections and have indicated employing individual waste minimization components in Form I Question 2 must complete this form. This section requests information on the specific components of your waste minimization program. Please complete the sections that are applicable to your state program. Questions on different waste minimization components are presented separately so that they may be distributed to different program officials if necessary. States should copy and complete the form and include it—along with additional documentation—in Part 2 of their CAP. Please attach additional information if more space is needed to answer any question.

Form III includes the following:

- III-a Technical Assistance
- III-b Economic Incentives
- III-c Waste Exchange
- III-d Research and Development
- III-e Regulatory Requirements
- III-f Education

Respondents to each set of questions in this form should attach their name and telephone number should additional information be necessary.

Name of Respondent \_\_\_\_\_  
Telephone number \_\_\_\_\_  
Address \_\_\_\_\_

1. Please indicate the approximate emphasis that your state places on the following waste minimization components as a percent of your waste minimization budget.

Component	Approximate percent of budget
Technical Assistance .....	_____
Economic Incentives.....	_____
Waste Exchange.....	_____
Research and Development.....	_____
Regulatory Requirements.....	_____
Education.....	_____
Other.....	_____
Total.....	100%

### III-a Technical Assistance

Indicate which of the following Technical Assistance components are currently in use or proposed for use in your waste minimization program.

Technical Assistance		
On-going	Proposed	
_____	_____	On-site assistance
_____	_____	Information clearinghouse/ Library
_____	_____	Technical workshops
_____	_____	Feasibility studies
_____	_____	Other:

2. For Technical Assistance, please provide the following information for existing programs or proposed programs:

2a. Describe the specific target of the Technical Assistance program (e.g., waste streams, industry categories, or both).

2b. Why did you choose to implement this program?

2c. What problems to implementing the Technical Assistance program do you anticipate or have you experienced?

### III-b Economic Incentives

1. Indicate which of the following Economic Incentives components are currently in use or proposed for use in your waste minimization program.

Economic Incentives		
On-going	Proposed	
_____	_____	Awards/matching grants
_____	_____	Taxes/Fees (e.g., waste-end, front-end, point-of-use)
_____	_____	Low-interest loans
_____	_____	Tax credits
_____	_____	Other:

2. For Economic Incentives, please provide the following information for existing or proposed programs:

2a. Indicate the number of grants provided in the base year as part of this component.

2b. What is the current (or projected) annual budget for grants provided in your waste minimization program as part of

Economic Incentives (in thousands of dollars)?

2c. Describe the specific target of the Economic Incentives program (e.g., waste streams, industry categories, or both).

2d. Why did you choose to implement this program?

2e. What problems to implementing the Economic Incentives program do you anticipate or have you experienced?

### III-c Waste Exchange

1. Indicate, which of the following Waste Exchange components are currently in use or proposed for use in your waste minimization program.

Waste Exchange		
On-going	Proposed	
_____	_____	State-promoted
_____	_____	State-managed
_____	_____	State-financed
_____	_____	Regional or multi-state effort
_____	_____	Other:

2. For Waste Exchange, please provide the following information for existing programs or proposed programs:

2a. What is the current (or projected) annual contribution to the Waste Exchange (in thousands of dollars) that you participate in?

2b. What is the name of the Waste Exchange that you participate in?

2c. Which states participate in this Waste Exchange (Please list)?

2d. Describe the specific target of the Waste Exchange program (e.g., waste streams, industry categories, or both).

2e. Why did you choose to implement this program?

2f. What problems to implementing the Waste Exchange program do you anticipate or have you experienced?

### III-d Research and Development

1. Indicate, which of the following Research and Development components are currently in use or proposed for use in your waste minimization program.



## Research and Development

On-going Proposed

- Options development/feasibility studies
- Pilot scale or demonstration projects
- Economic or policy analysis
- Manuals for audits or technology implementation
- Other:

2. For Research and Development, please provide the following information for existing programs or proposed programs:

2a. What is the current (or projected) annual budget for Research and Development (in thousands of dollars)?

2b. Describe the specific target of the Research and Development program (e.g., waste streams, industry categories, or both).

2c. Why did you choose to implement this program?

2d. What problems to implementing the Research and Development program do you anticipate or have you experienced?

## III-e Regulatory Requirements

1. Indicate, which of the following Regulatory Requirement components are currently in use or proposed for use in your waste minimization program.

## Regulatory Requirements

On-going Proposed

- Reporting requirements
- Reduction standards
- Design or operating standards (e.g., required chemical substitutions)
- Management standards (e.g., mandatory waste reduction audits, listing on waste exchanges)
- Other:

2. For Regulatory Requirements, please provide the following information for existing programs or proposed programs:

2a. Describe the specific target of the Regulatory Requirements program (e.g., waste streams, industry categories, or both).

2b. Why did you choose to implement this program?

2c. What problems to implementing the Regulatory Requirements program do you anticipate or have you experienced?

## III-f Education

1. Indicate, which of the following education components are currently in use or proposed for use in your waste minimization program.

## Education

On-going Proposed

- Governor's or other award programs
- Public education (e.g., seminars, workshops, pamphlets)
- Outreach
- Other:

2. For Education, please provide the following information for existing programs or proposed programs:

2a. Describe the specific target of the Education program (e.g., waste streams, industry categories, or both).

2b. Why did you choose to implement this program?

2c. What problems to implementing the Education program do you anticipate or have you experienced?

## WORKSHEET IV-1.—ESTIMATE REDUCTIONS

[In tons or percent reduction]

Waste Types	Projection years—		
	1989	1995	2009
1. Contaminated Soil			
2. Halogenated Solvents			
3. Nonhalogenated Solvents			
4. Halogenated Organic Liquids			
5. Nonhalogenated Organic Liquids			
6. Organic Liquids, NEC*			
7. Mixed Organic/Inorganic Liquids			
8. Inorganic Liquids with Organics			
9. Halogenated Organic Solids/Sludges			
10. Nonhalogenated Organic Solids/Sludges			
11. Organic Solids/Sludges NEC*			
12. Inorganic Liquids with Metals			
13. Inorganic Liquids, NEC*			
14. Inorganic Solids/Sludges with Metals			
15. Inorganic Solids/Sludges, NEC*			
16. Mixed Inorganic/Organic Solids/Sludges			
17. Other Wastes, NEC <sup>b</sup>			
Total			

\* NEC = Not Elsewhere Classified

<sup>b</sup> Other wastes include explosives, other highly reactives, radioactive/hazardous mixed wastes, gases, lab packs, and PCBs mixed with RCRA waste. Please present each of these waste streams

individually on a separate line if their waste quantity exceeds 5 percent of the total state waste quantity.

## Definitions Section

## Definition of Waste Minimization

**Waste Minimization.** The reduction, to the extent feasible, of hazardous waste that is generated or subsequently treated, stored, or disposed. Waste minimization includes any source reduction or recycling activity undertaken by a generator that results in: (1) the reduction of total volume or quantity of hazardous waste; (2) the reduction of toxicity of hazardous waste; or (3) both, as long as the reduction is consistent with the goal of minimizing present and future threats to human health and the environment.

**Source reduction.** The reduction or elimination of waste at the source, usually within a process. Source reduction measures include process modifications, feedstock substitutions, improvements in feedstock purity, housekeeping and management practices, increases in the efficiency of machinery, and recycling within a process. Source reduction implies any action that reduces the amount of waste exiting from a process.

**Recycling.** The use or reuse of a waste as an effective substitute for a commercial product, or as an ingredient or feedstock in an industrial process. It also refers to the reclamation of useful constituent fractions within a waste material or removal of contaminants from a waste to allow it to be reused. As used in this report, recycling implies use, reuse, or reclamation of a waste either on site or off site after it is generated by a particular process.

## Characterization of Waste Minimization Terms

## Technical Assistance

**On-Site Assistance.** Comprehensive technical assistance to aid industry in reducing the volume or toxicity of wastes generated. May include consultation on industrial and waste management practices and waste minimization options.

**Information Clearinghouse/Library.** A data base (electronic or hardcopy) made available to managers involved in waste minimization. Clearinghouses provide access to documents, references, and telephone assistance.

**Technical Workshops.** Information dissemination programs designed to keep industry and the community up-to-date on programs, technology, waste minimization activities and appropriate regulatory information.



**Feasibility Studies.** Technical assistance, provided off-site, consisting of process analysis and engineering study utilizing general knowledge. May be based on information gathered from similar industries or previous on-site technical assistance. Project results are usually applicable to assist in solving select ranges of manufacturing or institutional problems.

#### *Economic Incentives*

**Awards/Matching Grants.** Direct payments from the state to hazardous waste generators or others engaged in waste minimization activities. May be structured to encourage various types of waste minimization activities, to assist specific types of firms, or to focus on particular waste streams.

**Taxes/Fees.** A means by which states create an economic incentive for waste minimization. Front-end taxes can be imposed at or near the beginning of the commercial chain of production, throughout the distribution network, and at the point of consumption of selected chemicals and substances. Waste-end taxes may be levied on the generation, transportation, storage, treatment, or disposal of wastes.

**Low-Interest Loans.** Financial assistance that enables firms to reduce the cost of financing investments in processes and technologies that reduce wastes. Usually directed to both small and mid-sized hazardous waste generators who may be unable to obtain commercial credit at an affordable price.

**Tax Credits.** A direct reduction in the tax liability of the firm, generally rewarding only capital investments.

#### *Waste Exchanges*

Waste generated by one company are provided or sold to another company that can use the waste material in their operation. Recipient companies usually use the waste untreated or subject it to a minimal amount of treatment prior to reuse.

#### *Research and Development*

Involves applied hazardous waste research, development, and demonstration projects and may include feasibility studies, pilot- and bench-scale demonstration projects, and economic and policy analyses. Usually funded by government and in some cases the private sector, these projects are typically undertaken by universities and other academic institutions.

#### *Regulatory Requirements*

**Reporting Requirements.** Requests by the government for generator information sufficient to determine the effectiveness of waste minimization

programs. In some cases the companies involved in waste minimization are required to submit their plan as a part of a permit application to the regulating authority for adequacy.

**Reduction Standards.** Specific targets for reduction over time in the quantity and/or toxicity of certain waste streams.

**Design or Operating Standards.** Limitations or criteria applied to process design and manufacturing operations, usually specific to particular industries and/or waste streams, to minimize waste generation.

**Management Standards.** Directed to encourage waste minimization. Requires good management practice standards which may include mandatory audits or listing of wastes on a waste exchange.

#### *Education*

**Governor's or Other Award Programs.** A low-cost means to recognize and honor companies and institutions that have demonstrated outstanding achievement in hazardous waste management.

**Public Education/Outreach.** Promotional activities designed to keep the public informed of the need for a commitment to hazardous waste minimization. Targeted in general to citizen groups, trade associations, and professional organizations.

### **Chapter V—Projecting Hazardous Waste Generation, the Demand for Management Capacity, and Capacity Needs**

#### *Purpose*

This chapter outlines procedures for states to use when projecting hazardous waste generation and its subsequent demand for waste management capacity. Projected total demands are then compared to projected capacities for each of the 15 waste management categories presented in Chapter III. The result is an estimate of projected capacity needs for each waste management category. The completed worksheets and narrative should represent Part 3 of the CAP.

States must project waste generated within their borders in 1989, 1995, and 2009. The 1989 projection year corresponds to the next biennial reporting year. The 1995 projection will present a near-term estimate of demands for waste management after most of the current hazardous waste regulations—the land disposal restrictions in particular—take effect. The law specifies that states assure adequate waste management capacity for 20 years, hence the year 2009 projection.

The methods contained in this chapter reflect procedures commonly used today to project waste generation. The Agency recognizes the inherent uncertainty of projections and the limitations of all procedures. For this reason, the Agency does not endorse any one system; states are free to choose the approach that best represents their particular situation. However, all projections must adhere to the following general guidelines:

- Projections must take into account economic expansion or contraction and its effect on the quantity of waste generated by the major sources within the state.

- Projections must account for the effects of waste minimization activities on future waste generation, based on clear documentation as described in Chapter IV and quantified in this chapter.

- Projections must account for non-recurrent wastes (from equipment decommissioning or replacement, materials or product disposal, materials or product spills, closure actions, remedial or corrective actions, or other non-routine sources) as well as waste generated from continuous industrial processes.

- To the extent possible, the state must address the potential effect of regulatory change on future waste generation and management options. EPA will provide a list of key regulations that the states should include in their analysis.

#### *General Instructions*

For each of the projection years, states should summarize their projections of waste quantities and effects on waste management capacity using worksheets V-1 and V-2, respectively. Worksheet V-2 is used to calculate waste management demand from in-state waste after subtracting waste exports. Worksheet V-3 is similar to Worksheet V-2, except that it requires states to estimate management capacity demand based on total in-state waste generation (including projected exports). Final potential capacity needs are determined in Worksheet V-4, which asks states to report estimated capacity needs after incorporating the effect of waste imports and exports. While the combined effect of imports and exports are used to estimate capacity needs, states also must report the balance of total in-state generated waste (including potential exports) against total in-state available capacity (excluding potential exports). This calculation, also required in Worksheet V-4, will be used by EPA to examine the



effect of waste imports and exports on each state's capacity balance.

The following sections provide general instructions on projecting waste from continuous industrial processes using common economic indicators and procedures; and projecting waste generated intermittently, such as that resulting from RCRA and CERCLA cleanups. Much of the analysis conducted for Chapter III will be used to complete this chapter, and similar expertise will be needed. In addition, states should coordinate their efforts with other state offices responsible for projecting and/or tracking state industrial activity or revenues. To the extent possible, waste generation should be based on the same economic forecast information used to project general business activity in the state or region.

Technical assistance is available from EPA in several forms. A Hotline at the Agency is available during the hours of XX and XX Eastern Standard Time, Monday through Friday. In addition, the EPA Regional Office serving your state has assigned several individuals to answer questions. Please consult the *Technical Reference Manual* for more details, including a list of individuals and phone numbers.

#### Evaluation criteria

The Agency recognizes that no single methodology exists that is universally acceptable for projecting hazardous waste generation. Considerable discretion is left to the states to formulate reasonable projection methods. However, the Agency plans to evaluate the waste projections portion of the state's CAP on the following points:

- The underlying economic assumptions used in the projections should reflect existing or official projections of state economic activity unless otherwise justified by the state;
- The projections must account for major waste producing industries and the range of possible changes in the economic behavior of these industries;
- The projections must account for non-recurrent waste (e.g., CERCLA or RCRA remedial or corrective actions);
- The projections must correctly incorporate the predicted effects of waste minimization as outlined in Chapter IV; and
- The projections must document assumptions regarding waste imports and exports as required in the CAP.

Many states will have the capabilities to provide detailed estimates of future waste generation amounts and their demand for management capacity. Others may not have these capabilities or may choose not to make detailed

estimates either because they have limited industrial sources or do not foresee significant economic changes taking place. EPA will accept all projections as long as they show that the state has considered all relevant factors and is not in conflict with other official state policy on economic development.

EPA recognizes that projections made for year 20 will be far less certain than those made over the short term. In the absence of additional information, the EPA will accept linear extrapolation of trends developed through the 1995 projection period.

#### Projecting Recurrent Waste Generation From Industrial Sources

Using 1987 generation as a baseline, states should first estimate expected generation for projection years 1989, 1995, and 2009 solely on the basis of economic changes. States should then make adjustments to these estimates to account for the expected effects of waste minimization as described in Chapter IV. Finally, states should, to the best of their ability, adjust their projections to account for the effects of pending regulations (listed subsequently in this chapter) on the demand for waste management capacity.

#### Projecting Waste Generation Based on Economic Expansion or Contraction

Economic change is a combination of two measures: changes in economic base (reflected by the basic composition of the region's industry, including new entrants and closures) and changes in industrial output (defined as the total value of goods and services from current industrial production). The agency does not expect states to forecast changes in their state's economic base, unless such changes are likely and critical—announced plant closures or start-ups of key industries are examples of such critical changes. However, absent such information, states should assume that the set of industries responsible for generating the majority of the state's hazardous waste in the base year will exist over the projection period.

The states should account for the effects of economic forces specific to each state and, ideally, to those industries currently responsible for the majority of waste generated. This involves two steps. First, states should compile a list of those industries that are responsible for generating the majority of waste (as defined by the 17 CAP waste categories) in their state. For states using EPA's new Biennial Report forms, these data are available in Form IC, Section IV (SIC code identification) and either GM or GS (waste quantities).

Second, the waste generation characteristics of these industries should be normalized to some indicator of economic output (discussed subsequently). Projections of the same economic indicator (or growth factors) then can be used to project waste from the industrial category in question. For states in which most of the 17 waste categories are dominated by a single industry or ones having similar growth potential, these growth factors simply may be applied to each of the 17 waste categories as appropriate.

**Industries of Interest.** Ideally, industrial activity should be forecast for each 4-digit SIC (Standard Industrial Classification) code industry responsible for one percent or more of a state's total waste volume. There are about 450 4-digit SIC industries represented in the Office of Management and Budget's Standard Industrial Classification system. While the mix of major waste generating industries will vary from state to state, most states should find that less than 100 4-digit SIC industries will account for 95 percent to 99 percent of total state generation. In many states, particularly the smaller ones, the majority of hazardous waste quantities will be attributable to perhaps 20 industry groups.

Even though economic projections at the 4-digit SIC code level of detail may provide the most accurate basis for projecting future waste quantities attributable to economic change, states are not required to build sophisticated projections models to track changes at this level. States should choose the level of detail in their economic projections best suited to their industrial bases, level of detail in baseline waste generation data, and technical support available within the state to make projections. Some states may find, for example, that projections at the 2-digit SIC code level are most appropriate. Others may not have access to SIC code information linked to waste generation and may thus choose to project economic change using a statewide growth index such as total state product. All of these methods will be acceptable to the Agency if they are appropriately documented.

**Factors for Projection.** Actual records of the number of product units manufactured—tons of steel or barrels of oil, for example—are the most certain measures of industrial output because they capture, by definition, actual manufacturing activity within the plant. But using these measures to project future output in 70 to 100 industries would be unnecessarily complex. In the



past few years, states have chosen to project economic changes using the following indicators, specific to a target group of 4-digit SIC industries:

- Total employment;
- Production employment;
- Value added by manufacture;
- Value of shipments; and
- Personal income from manufacturing (wages).

States should choose the indicator that most closely approximates in-plant industrial activity, and for which adequate data is available. None of the indicators above are perfect in this respect but some are better than others. Availability of the data may be the overriding factor influencing the state's decision.

Value of shipments, for example, is routinely reported in national aggregate statistics and at the individual plant level. But this measure does not distinguish between manufacturing and inventories as the source of shipments. Waste generation would be overestimated, for example, if waste was normalized to data that represented shipments from inventories instead of production, since actual production levels (and, hence, waste) in that year would be lower than shipments would indicate. In addition, the double counting associated with cross-shipments in value of shipments data may account for overestimates of plant activity.

Total employment also is routinely reported in national statistics and by individual plants, but changes in employment can misrepresent manufacturing activity if management and production employment change at different rates. In addition, waste generation estimates based on employment will be significantly overestimated if a company headquarters, representing largely management as opposed to production labor, constitutes a significant share of total employment within a given SIC code.

Value added closely parallels manufacturing activity because this measure avoids the problem of inventories associated with value of shipments data. These data are more limited, however, at the national level and they are rarely reported by individual manufacturing establishments.

While production employment is an input measure of manufacturing and not an output measure, it remains a good overall indicator insofar as it parallels manufacturing activity and is generally available at the 4-digit SIC code level regionally. It is important to account for changes in labor productivity, however,

in projections of waste generation as a function of production employment. As industries automate, the ratio of waste per production employee may change, leading to over- or underestimates of future waste production if these adjustments are overlooked. In general, as labor productivity increases (the output per production employee rises), more waste will be created per employee in future years than in the baseline year.

Personal income from manufacturing, or simply wages, is another good overall indicator of plant activity. Estimates of personal income from manufacturing are available in national aggregate form, by 4-digit SIC code, and by state.

Sources of Data. The U.S. Department of Commerce (Bureau of the Census) and the U.S. Department of Labor (Bureau of Labor Statistics) collect and publish historical data on value of shipments, value added, total employment, production employment and income from manufacturing at the 4-digit SIC code level, by state or by county. At a minimum, all states can use these data to project future trends based on trends over the past five years. Alternatively, the Bureau of Industrial Economics prepares similar projections for groups of 4-digit SIC industries for the nation as a whole in its annual publication, *U.S. Industrial Outlook*. States can adapt these national projections if they so choose or they can adjust them with state-specific data. The Bureau of the Census' publication, *County Business Patterns*, provides a source of historical data on employment and sales, by industry and by county. Projections of personal income from manufacturing by SIC code and state through the year 2000 are available through the U.S. Bureau of Labor Statistics. Similar projections at the state level may be available from state agencies responsible for employment or labor trends.

Typically, a state economic development office or office of the Governor responsible for revenue projections will prepare its own forecast of industry growth. These projections may be incorporated directly into capacity assurance projections.

Reporting Projections. States report the results of hazardous waste projections attributable to economic change in column A of Worksheet V-1. A separate Worksheet should be presented for each projection year.

Documenting Projections. States should develop narrative support for the projections of waste generation and demand for management types presented in Worksheet V-1. In particular, the narrative documenting

the effects of economic change should explain how growth factors were applied to project waste.

#### Incorporating the Effects of Waste Minimization

States have the option to reduce demands for waste management capacity in 1989, 1995, and 2000 by promoting waste reduction and projecting its effects. Plans for implementing and accounting for such activities must be documented in Chapter IV. In that chapter, states must identify two key parameters of their waste reduction adjustments: (1) target percent or tonnage reductions by waste type, and (2) a schedule over which these reductions are expected to take place. In this chapter, states must show how the factors developed in Chapter IV have been incorporated in their projections.

The most straightforward approach is to adjust the expected waste quantities generated in a target year by the quantity expected to be reduced through waste reduction. A simple narrative explanation of how waste reduction factors were applied should be included to support the adjustments made in column B of Worksheet V-1.

#### Incorporating the Effects of Regulatory Changes on Waste Generation

EPA anticipates that changes in regulations over the projection period will affect both waste quantities (the demand for waste management capacity) and the allowable alternatives for management. Both are expected to affect a state's ability to assure adequate capacity. This section identifies the extent to which states should include the effects of regulatory changes on projections of waste generation. A subsequent section addresses the effects of regulatory changes on capacity supply and on the allowable matching of waste type to management categories.

The effects of regulatory changes on the demand side should be incorporated in column C of Worksheet V-1. Regulatory effects on waste generation also should be documented separately in a narrative statement.

Because of the uncertainty in projecting these effects over a 20-year period, EPA expects the states to account for regulatory change only to the extent that the Agency has published and can make available to the state its Regulatory Impact Analysis (RIA) for each rule, as of October 1, 1988. The RIA will describe likely quantitative effects on waste generation and consequent demands for



management technologies. The following is a list of rules that EPA expects to have an impact on capacity assurance, and for which publication of an RIA is expected by October 1:

**Land Disposal Restrictions, First Third.** Should effect virtually all listed and characteristic wastes and, by extension, all industries generating them. Expected to shift the management of certain waste streams away from land disposal and toward incineration and other treatment options. Also expected to stimulate waste reduction. Treatment standards must be promulgated by May 8, 1990.

**New Listings.** Should expand the number of waste streams under regulation; six new wood preserving waste streams will be proposed in September 1988, including two wastewater streams (1.1 million tons/year) and four process streams (45,000 tons/year); two new waste streams to be added in summer 1988 from methyl bromide manufacture (amounts confidential); one new waste stream from petroleum refining to be added in 1988 (200,000 tons/year).

States should estimate the additions (or deletions) to regulated waste volumes attributable to the above rules and record these results in Column C of Worksheet V-1.

#### *Projecting Non-Recurrent and One-Time Only Waste Generation*

Non-recurrent waste generation can result from periodic industrial operations (boiler and other process unit maintenance) and RCRA and CERCLA corrective actions and cleanups. Waste generated from these sources—while possibly significant—are much more difficult to project than waste from continuous industrial processes. In the long run, the demand for capacity imposed by one-time wastes may be less important to capacity assurance than the demand imposed by recurrent wastes. Separating one-time from recurrent wastes, therefore, should be in the state's best interest.

EPA recognizes that data for projecting the generation of one-time waste are generally less available and less reliable than data on recurrent waste generation. This section describes possible methods that states may use to make such projections, given current data inadequacies. States are encouraged to develop alternative methods to project one-time waste generation and to fully document their assumptions and procedures.

While data may not always be available to support realistic calculations, states—as a minimum—should attempt to estimate RCRA-

hazardous waste produced from the following classes of activities;

- Site remedial actions (from federal Superfund and state clean-ups);
- RCRA corrective actions;
- Underground storage tank cleanup; and
- Site remediation as a result of real estate transfer statutes.

The projected sum of all non-recurrent waste quantities should be reported by waste type in column D of Worksheet V-1 (one worksheet for each projection year). Calculations should be documented in a separate narrative.

#### *Notice of Corrective Actions to Receiving State*

To assist states in accounting for the amounts of CERCLA corrective action waste imported into their state, the EPA will inform the recipient state regarding its intention to fund remedial actions and immediate removals that will cause wastes to be shipped to that state. This information will include the source of waste, waste quantity, waste characteristics, proposed treatment or disposal facility to receive waste, and anticipated shipment date. The information will be provided to the recipient state's environmental regulatory agency at least 45 days in advance of the anticipated shipment date. This action will allow the recipient state an opportunity to comment on the consistency of the removal with both the exporting state's CAP and its own plan.

#### *Site Remedial Actions*

For many Superfund sites, estimates of the quantities of contaminated site wastes (soils and groundwater) that may require off-site treatment and disposal are available in Records of Decision (RODS). Where RODS have not yet been prepared, more limited information regarding quantities likely to be encountered at Superfund sites may be available in Remedial Investigations, Feasibility Studies, or Hazard Ranking System listings. These documents are available for review in EPA's 10 regional offices. The annual volume of wastes to be removed from these sites is largely a function of the extent of contamination (and hence the decision to ship waste off-site or handle it on-site) and rate of expenditures for site cleanup activities. EPA recognizes that these estimates will be highly uncertain, especially for those sites without approved RODs or for state cleanup sites without comparable documentation.

Where data permit, states should prepare a list of all federal and state Superfund sites for which reliable estimates of the quantity to be handled

is available and estimate a time interval over which actual remedial work will be completed. Such estimates may be best made by the State Superfund office or the EPA regional Superfund coordinator. For each site, prepare a listing of the contaminants that predominate and match them as closely as possible to one (or more) of the 17 capacity assurance waste categories. Much of this information should be available in site investigation and decision documents referenced above. In the absence of such information, exclude this site from further consideration.

States should then estimate the quantity of Superfund waste expected to be handled off-site at in-state facilities versus that quantity to be exported. Superfund waste shipped off-site must be manifested like any other waste stream regulated under RCRA. An analysis of current waste manifests may be used to project future in-state handling from exported Superfund waste. Regardless of how states make this estimate, however, it should be fully documented with descriptions of procedures and explanations of assumptions.

#### *RCRA Corrective Action Sites*

State should assemble the following information:

(1) From the regional EPA office or the state RCRA permitting office (depending on your state's authorization), compile a list of potential RCRA sites that will require corrective action (be sure to include corrective action as a condition of obtaining a Part B permit plus corrective action as a condition of closure). In most cases, states will be unable to estimate waste quantities or waste volumes to be removed unless a Corrective Measures Study (CMS) has been prepared. The Agency recognizes that as relatively few corrective action sites have progressed to the CMS stage (several years may elapse before a potential site has been fully evaluated), states may be limited in their ability to incorporate the effects of RCRA corrective action into their 1989 CAP. In the absence of these data, states may wish to assume that a proportion of RCRA facilities will require corrective action and document that assumption to the best of their ability.

(2) Estimate the amounts and timing of expected on-site management demands and off-site demands using methods described above for Superfund site estimates.

(3) Estimate the proportion of off-site waste expected to be shipped to in-state facilities and that shipped out of state using information on waste manifest



forms. In the absence of an historical record of shipments from RCRA corrective action sites, the state should assume that all removed material will be shipped to in-state facilities, if they now exist. Otherwise assume that they will be exported.

#### Underground Storage Tanks

While they are regulated separately, corrective action requirements for releases from tanks containing petroleum or hazardous substances are similar to other cleanup requirements—visibly contaminated soils must be removed. If residual contamination of groundwater or surrounding soils persists, additional cleanup is necessary. Actual levels of cleanup are determined on the basis of site-specific environmental risks and potential exposure. States should include estimates of RCRA-hazardous waste quantities likely to be generated as a result of underground storage tank remediation, only if sufficient data are available. The type of data needed include:

- Inventory of tanks subject to regulation
- Statistics on leakage rates, preferably by type of tank
- Characterization of tank inventory by contents (gasoline, solvents, other organics, inorganics)
- Field estimates of extent of contamination. If these data are available, states should estimate quantities and timing of demand for waste management services using methods similar to those presented for estimating Superfund demands.

#### Site Remediation From Real Estate Transaction Laws

If applicable, states should include estimates of RCRA-regulated waste generated from site remediation pursuant to state real estate transfer statutes (i.e. New Jersey's ECRA statute) based on trends in past rates of generation, if such data are available.

#### Total Projected Demands

States should record the sum of columns A through D in column E of Worksheet V-1. This quantity represents the total projected demand for waste management capacity without consideration for the location of handling or of the effects of imports or exports.

#### Matching Waste Types to Management Categories and Incorporating the Effects of Regulatory Change on Capacity Supply

Total demands for waste management capacity should be brought forward

from Column E of Worksheet V-1 and distributed among the 15 waste management categories in Worksheet V-2 in such a way that none of the rules expected to be in place in each projection year would be violated. Most untreated liquid and sludges, for example, should be banned from land disposal by 1995; thus, no waste of this nature should be matched with land disposal in Worksheet V-2, unless it first undergoes some treatment. States should briefly describe the assumptions behind their projected matches of waste types to management categories.

States also should estimate the demand for RCRA, capacity imposed by non-regulated waste. EPA will provide estimates of these data as of 1986 from the TSDR Survey. States can hold this level of demand steady over the projection period or adjust it up or down, consistent with state policies on the proper handling of non RCRA-regulated waste. These entries should be documented in a separate narrative.

**Projecting Efforts.** States may show level, reduced, or increased exports (relative to 1987 levels) in the final column of Worksheet V-2, to the extent that they do not violate the "reasonableness" criteria of Appendix A. EPA will assume that the pattern of exports (the states to which different quantities of exports are sent) in the projection years will remain the same as the pattern of exports in 1987 as noted in Worksheet III-7. If a state believes that this pattern will change in any projection year, a narrative statement should accompany worksheet V-2, explaining the changes. For example, a state might enter into an agreement with another state that changes the pattern of export flows to that state, as reflected in both states' CAPs.

Worksheet V-3 is similar to V-2, except that it asks states to determine the effect on management capacity of all projected in-state waste, including exports. The results of both Worksheets will be used to estimate capacity need in Worksheet V-4.

#### Calculating Hazardous Waste Management Capacity Needs

Using Worksheet V-4, states must determine the amount of management capacity potentially needed in the state over the next 20 years. In determining these needs, the state must make adjustments to account for on-site and captive handling and describe assumptions on waste imports and exports.

#### Adjustments for On-Site and Captive Handling

For purposes of assuring capacity, states can assume that all-waste (or the proportion of total waste) currently managed on-site will continue to be managed on-site, unless the state believes regulatory changes or market forces will alter this pattern. If such shifts are anticipated, states should document the assumptions leading to the conclusion. Similarly, states can assume that all waste (for the proportion of total waste) now handled in captive facilities will be handled in captive facilities in the projection years.

In either case, states should retrieve the appropriate data from Chapter III, Worksheets III-3 and III-4 and present their best estimate of on-site and captive handling in Worksheet V-4 (a separate worksheet for each projection year). The first row of Worksheet V-4 should be brought forward from the column totals of Worksheet V-2 and V-3.

#### Projecting Commercial Capacity Needs

States should calculate their potential need for additional in-state waste management capacity using the top block of rows in Worksheet V-4. These calculations use the demand projection figures obtained from Worksheet V-2, which subtract the quantities of waste projected to be exported by the state (see "Projecting Exports," page V-7). To calculate "Total Demand With Imports, Excluding Exports," total demand estimates first must be transferred from the last row of Worksheet V-2 (for each appropriate projection year). Capacity demand directed to on-site and captive facilities next must be subtracted (see discussion above), and demand due to projected waste imports must be added.

**Projecting Waste Import Demand.** States may hold imports constant to 1987 levels—or allow them to grow—in their demand projections without providing additional narrative to EPA. If imports are shown to decline. The assumption of declining imports would be acceptable if it corresponds with CAP of the state exporting the waste, or if it is based on the importing state's assumption that export practices from other states will change over time in accordance with the process of Appendix A. If an assumption of declining imports is not supported by other states' CAPs, then the importing state must fully document the basis of its assumption.

**Final Calculation of Demand.** In estimating final demand, states may claim all available capacity projected as available through 1989, based on their



analysis in Chapter III. Data on 1989 commercial capacity should be obtained from Worksheet III-6. The predicted 1989 commercial capacity should be subtracted from the total commercial demand figures in Worksheet V-4 to obtain an estimate of capacity shortfall (or excess) in each projection year. These figures will form the basis of capacity need plans as described in Chapter VI.

Calculating the In-State Capacity Balance. The bottom block of rows in Worksheet V-4 are used to calculate the balance of total in-state commercial capacity (excluding import demand) against total in-state waste generation (including potential waste exports.) To complete these calculations, states first

should transfer the demand estimates from Worksheet V-3 (for each appropriate year) to Worksheet V-4 (for each appropriate year). Subsequent calculations then are similar to those described above (for the top block of rows) except that import effects are neglected.

The result of these calculations will be used by EPA to assess the effect of waste imports and exports on the commercial capacity contained in each state. They will not be used as a basis for assessing future need.

#### Plans To Address Capacity Shortfalls

States that show an excess of management capacity in Worksheet V-4

for the projection years 1989, 1995, and 2009 are not required to present plans for addressing capacity shortfalls. These states must only supply brief information in Chapter VI.

States that show a shortfall of management capacity in Worksheet V-4 for projection years 1989, 1995, and 2009 must describe their procedures in Chapter VI to create new capacity through either new or expanded facilities in the state. States may choose not to meet the entire shortfall by creating new capacity. In this case they must revise their numbers for waste minimization (Chapter IV) and waste exports and recalculate Worksheet V-4.

#### WORKSHEET V-1.—SUMMARY OF IN-STATE WASTE QUANTITIES PRODUCED IN PROJECTION YEAR ———

[All in tons/year]

Management Technology	Projected Demand From Recurrent Waste Generation	Adjustment for Waste Reduction	Adjustment for Regulatory Change	Demand from One-Time Waste	Total Demand (A + B + C + D)
	A	B	C	D	E
1. Contaminated Soil					
2. Halogenated Solvents					
3. Nonhalogenated Solvents					
4. Halogenated Organic Liquids					
5. Nonhalogenated Organic Liquids					
6. Organic Liquids, NEC					
7. Mixed Organic/Inorganic Liquids					
8. Inorganic Liquids with Organics					
9. Halogenated Organic Solids/Sludges					
11. Organic Solids/Sludges NEC					
12. Inorganic Liquids with Metals					
13. Inorganic Liquids, NEC					
14. Inorganic Solids/Sludges with Metals					
15. Inorganic Solids/Sludges, NEC					
16. Mixed Inorganic/Organic Solids/Sludges					
17. Other Wastes, NEC*					
Total					

\*Other wastes include explosives, other highly reactives, radioactive/hazardous mixed wastes, gases, lab packs, and PCBs mixed with RCRA waste. Please present each of these waste streams individually on a separate line if their waste quantity exceeds 5 percent of the total state waste quantity.

Note: NEC = not elsewhere classified.



## Worksheet V-2:

Demand for Waste Management in Projection Year \_\_\_\_\_  
After All Adjustments

WASTE TYPES	MANAGEMENT CATEGORIES																	
	Generation	Metals recovery	Solvents recovery	Other recovery	Incineration -- Liquids	Incineration -- Sludges/Solids	Energy recovery	Aqueous inorganic treatment	Aqueous organic treatment	Sludge treatment	Other treatment	Stabilization	Land treatment	Landfill	Deep-well injection	Other disposal	EXPORTS	TOTAL
Contaminated soil																		
Halogenated solvents																		
Nonhalogenated solvents																		
Halogenated organic liquids																		
Nonhalogenated organic liquids																		
Organic liquids, NECA																		
Mixed organic/inorganic liquids																		
Inorganic liquids w/organics																		
Halogenated organic solids/sludges																		
Nonhalogenated organic solids/sludges																		
Organic solids/sludges, NEC																		
Inorganic liquids w/metals																		
Inorganic liquids, NEC																		
Inorganic solids/sludges w/metals																		
Inorganic solids/sludges, NEC																		
Mixed organic/inorganic solids/sludges																		
Other wastes, NEC b																		
Non-RCRA Waste																		
TOTAL																		

a) Not Elsewhere Classified

b) Including explosives, other highly reactives, radioactive/hazardous mixed, gases, lab packs, &amp; PCBs mixed with RCRA wastes.



## Worksheet V-3:

Demand for Waste Management Capacity from  
All (Including Exports) In-State Generation in Projection Year \_\_\_\_\_

WASTE TYPES	MANAGEMENT CATEGORIES													
	Generation	Metals recovery	Solvents recovery	Other recovery	Incineration -- Liquids	Incineration -- Sludges/Solids	Energy recovery	Aqueous inorganic treatment	Aqueous organic treatment	Sludge treatment	Other treatment	Stabilization	Land treatment	Landfill
TOTAL														
Contaminated soil														
Halogenated solvents														
Nonhalogenated solvents														
Halogenated organic liquids														
Nonhalogenated organic liquids														
Organic liquids, NEC <sup>a</sup>														
Mixed organic/inorganic liquids														
Inorganic liquids w/organics														
Halogenated organic solids/sludges														
Nonhalogenated organic solids/sludges														
Organic solids/sludges, NEC														
Inorganic liquids w/metals														
Inorganic liquids, NEC														
Inorganic solids/sludges w/metals														
Inorganic solids/sludges, NEC														
Mixed organic/inorganic solids/sludges														
Other wastes, NEC <sup>b</sup>														
Non-RCRA Waste														
TOTAL														

a) Not Elsewhere Classified

b) Including explosives, other highly reactives, radioactive/hazardous mixed, gases, lab packs, &amp; PCBs mixed with RCRA wastes.

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## WORKSHEET V-4.—SUMMARY OF DEMAND FOR COMMERCIAL HAZARDOUS WASTE MANAGEMENT CAPACITY IN PROJECTION YEAR—

	Waste Management Category						
	Thermal Destruction (all in tons/year)			Final Disposition			
	Liquids incineration	Solids Incineration	Energy Recovery	Land Treatment (in tons/year)	Deepwell Injection (in tons/year)	Landfill (tons)	Other disposal
Total Demand with Imports, Excluding Exports — waste handled on-site — waste handled in captive facilities + waste imports = Demand for Off-Site Commercial Waste Management Capacity — commercial capacity available 1989 = Estimated Capacity Shortfall (if positive) Estimated Capacity Remaining (if negative)							
Total Demand Excluding Imports, Including Exports — waste handled on-site — waste handled in captive facilities = Demand for Off-Site Commercial Waste Management Capacity — commercial capacity available 1989 = In-State Capacity Balance							

## WORKSHEET V-4 (CONTINUED).—SUMMARY OF DEMAND FOR COMMERCIAL HAZARDOUS WASTE MANAGEMENT CAPACITY IN PROJECTION YEAR —

	Waste Management Category							
	Reuse/Recovery (all in tons/year)			Treatment (all in tons/year)				
	Metals	Solvents	Others	Organic *	Inorganic *	Sludge	Stabilization	Other
Total Demand with Imports, Excluding Exports — waste handled on-site — waste handled in captive facilities + waste imports = Demand for Off-Site Commercial Waste Management Capacity — commercial capacity available 1989 = Estimated Capacity Shortfall (if positive) Estimated Capacity Remaining (if negative)								
Total Demand Excluding Imports, Including Exports — waste handled on-site — waste handled in captive facilities = Demand for Off-Site Commercial Waste Management Capacity — commercial capacity available 1989 = In-State Capacity Balance								

\* Note: Separate reporting for aqueous inorganic and aqueous organic treatment is optional in 1989, but mandatory in and thereafter

## Chapter VI—Documenting State Plans for Increasing in-State Capacity

## Purpose

This chapter requests information on each State's procedures that affect or facilitate the development of hazardous waste management capacity. Because the CAP addresses a 20-year timeframe, most states will not have adequate capacity in-place today to handle all the hazardous waste generated over the next 20 years, making it necessary for States to document their procedures to allow or facilitate capacity development.

Chapter V of the guidance document asked each state to summarize their projected need for hazardous waste management capacity over the next twenty years, after taking into account waste minimization efforts and waste exports. All states showing a shortfall in their hazardous waste management capacity in their projection years must describe their plans for addressing this shortfall through their facility siting process and their procedures to process existing facility expansion applications. States projecting hazardous waste capacity shortfalls within the projection period through 1995 also must report key interim and final siting milestones, such

as site designation, permit submission, permit approval, and expected construction start.

## General Instructions

To complete the requirements of this chapter, states should respond to the questions contained in the attached forms. States should copy and complete the appropriate forms and include them in the CAP. Additional documentation should be included as needed.

Not all forms must be completed. States that project sufficient capacity through year 20 must only complete Form I, "General Siting Description". This form requests general information



on state procedures that affect or facilitate the development of new hazardous waste capacity. It covers such items as the state's general siting process, preemption and override authority of local and state government, and laws that restrict the operation or configuration of a facility.

States that project a capacity shortfall in any projection year after taking into account waste minimization and waste exports must complete both Form I and Form II, "Capacity Development Plans," requests a more detailed description of topics covered under Form I.

Finally, those states that project a shortfall in 1989 or 1995 must complete all forms up through Form III, "Milestones and State Review". This form requests information on the state's anticipated progress in meeting its shortfall.

A glossary of the terms used in this Chapter is contained in the Definition Section at the end of the chapter. In addition, technical assistance is available from EPA in several forms. A Hotline at the Agency is available during the hours of XX and XX Eastern Standard Time, Monday through Friday. In addition, the EPA Regional Office serving your state has assigned several individuals to answer questions. Please consult the *Technical Reference Manual* for more details, including a list of individuals and phone numbers.

#### Evaluation Criteria

The EPA recognizes that many different state approaches exist for planning and overseeing the development of new hazardous waste management capacity. Each state has and probably will employ a different strategy to ensure that it has adequate capacity now and in the future. The Agency therefore will focus its evaluation on two key areas:

- The ability of a state program to allow or facilitate the development of adequate capacity when needed; and,
- The degree of a state's reliance on out-of-state capacity as a substitute for developing in-state capacity.

If a state has shown in Chapter V that it plans to construct new capacity to meet projected needs, EPA will evaluate the ability of a state program to meet the expected shortfall. Because the Agency recognizes that states can do many things to promote, facilitate, or simply allow the development of new capacity, the Agency will concentrate in review on items that may indicate a flawed program or that actually hinder siting. Practices or policies that may either hinder new capacity development or indicate program difficulties include the following:

- A state siting process that is subject to strong local preemption powers not firmly grounded in environmental, health, and safety concerns. An inability of the state to appeal or rectify such preemption.

- The absence of a siting program having clearly defined steps and procedures. A lack of sufficient opportunity for public review and comment. The absence of clear time lines between permit review, comments, and approval or denial.

- The enactment of rules that may be viewed as discriminatory, such as placing limits on facility size, type of waste allowed at the facility based on origin of the waste, or outright prohibition of waste management facilities if not based on environmental health, and safety concerns. (This would not include limitations that may be agreed to by the facility developer and the host community as part of siting process negotiation.)

- A state having sufficient demand for new hazardous waste capacity accompanied by a history of failed siting efforts.

The Agency also will examine the states reliance on out-of-state hazardous waste management capacity to determine if it conflicts with the requirements set forth in Appendix A.

#### Form I: General Siting Description

All states must fill out this form. States should copy and complete the form and include it—along with additional documentation—in Part 4 of their CAP. Please attach additional information if more space is needed to answer any question.

Name of Respondent \_\_\_\_\_

Telephone number \_\_\_\_\_

Address \_\_\_\_\_

1. Does your State have a formal hazardous waste management facility siting process in addition to the RCRA permitting process?

— Yes — No?

If Yes,

1a. What are the titles of the legislative authorities and when were they enacted?

2. Does your State have a siting agency that is distinct from the RCRA regulatory agency?

— Yes — No?

If Yes,

2a. What are the titles of the legislative authorities and when were they enacted?

3. Please describe (in a brief narrative) the procedure used to review facility applications, select sites (if applicable), review permits, and provide public comment. Please indicate the time required to complete major steps, such as the time required between permit application and approval/denial. Include an explanation of the appeals process available to the siting applicant, the host community, and siting opponents.

(Where applicable, please note how a particular activity differs for expansion of existing facilities compared to siting of new facilities. If the process is significantly different for new sitings and expansions, please prepare two separate descriptions.)

3a. If possible, please construct a flowchart showing the major steps of the siting process as described in your narrative. Where known, indicate the time necessary for an application to proceed through each required step. (See example contained in back of this chapter.)

4. Please describe (in a brief narrative) the outcome of recent siting applications since 1986.

5. The following questions address basic laws and rules that may affect the siting or expansion of new facilities. When answering the following questions, please note the relevant law or rule (if applicable) and briefly describe any special circumstances or constraints that apply.

5a. Do local governments in your State have the authority to approve RCRA permits?

— Yes — No?

If Yes, please list the applicable regulation or authority.

5b. Do local governments in your State have the power to prohibit facility siting by the use of zoning ordinances?

— Yes — No?

If Yes, please list the applicable regulation or authority.

5c. Does your State have the power to override local zoning authority and/or preempt local zoning powers?

— Yes — No?

If Yes, please list the applicable regulation or authority.

5d. Does your State have the power to override and/or preempt any other local authorities that could prohibit or restrict capacity development?

— Yes — No?

If Yes, please list the applicable regulation or authority.

5e. Are there State restrictions on the size or number of new or expanded facilities?

— Yes — No?

If Yes, please explain.

5f. Does the State allow facilities to be built that have greater capacity than that needed to treat in-State waste?

— Yes — No?

If No, please explain.

6. The following pertain to laws and regulations that affect interstate transportation of hazardous waste.

6a. Does your State assess a fee on the generation of hazardous waste?

— Yes — No?

If Yes, please explain.



6b. Does your State assess a fee for the treatment or disposal of hazardous waste?  
— Yes — No?

If Yes, please explain.

6c. Does your State have the power to establish differential fees on waste that is imported for treatment and/or disposal?  
— Yes — No?

If Yes, please explain.

6d. Are any limits placed on the size of the differential fee?  
— Yes — No?

If Yes, please explain.

6e. Do local or county governments have the power to establish differential fees on waste that is treated and/or disposed of in their jurisdiction?  
— Yes — No?

If Yes, please explain.

7. In addition to the CAP, has the State conducted a needs assessment?  
— Yes — No?

7a. Does your State plan to use the CAP to assess needs?  
— Yes — No?

7b. If not, what do they plan to use to determine the need for new facility capacity?

8. Does the needs assessment indicate a potential shortfall (in commercial capacity)?

Projection Year 1989 — Yes — No

Projection Year 1995 — Yes — No

Projection Year 2009 — Yes — No

If You Answered Yes to any Part of Question 8, You Must Complete Form II.

#### Form II. Capacity Development Plans

Only those states that project a capacity shortfall in any projection year must complete this form. States should copy and complete the form and include it—along with additional documentation—in Part 4 of their CAP. Please attach additional information if more space is needed to answer any question.

Name of Respondent \_\_\_\_\_

Telephone number \_\_\_\_\_

Address \_\_\_\_\_

1. How much new commercial facility capacity will be needed by 1989, 1995, and 2009 to meet the shortfall anticipated for hazardous waste management capacity? See Worksheet VI-1.

2. How does your State intend to develop new in-State capacity as identified in its needs assessment?

—By siting new facilities

—Through the expansion of existing facilities

—Both

—Other, please explain

3. If you intend to meet new capacity needs by increasing waste exports beyond the 1987

levels, please explain why. Please indicate whether such plans are based on management planning efforts with other states, industries increasing exports to captive facilities, any environmental or economic considerations that restrict development of in-State capacity, or projections of current patterns.

3a. Have you contacted states that now receive your waste exports prior to completing your CAP?  
—Yes —No?

3b. If Yes, will the CAPs of these states reflect your projected export patterns?  
—Yes —No?

Please list the states that you have contacted.

3c. Are you participating in a multi-state hazardous waste management planning effort?  
—Yes —No?

3d. Please list the participating states.

4. Does your State have siting criteria?  
—Yes —No?

If Yes, please attach information describing your siting criteria.

5. Are any of the following methods used in your State to select sites or encourage site development (check all that apply)?

—State selection of specific site

—State purchase of specific site

—State inventory of suitable sites

—Private nomination of site

—Local nomination of site

—Permit fast tracking

—Other, please list:

6. How is the public allowed to participate in the siting process in order to affect the siting decision?

—Adjudicatory public hearings

—Informational public hearings

—Local advisory committee

—Local representatives on siting board

—Other, please explain

7. Is financial assistance provided to the local community to allow it to review the siting application and conduct an environmental or health assessment?  
—Yes —No?

If yes,

7a. Who supplies the funds?

—State

—Siting applicant

—Other, please explain

7b. What is the maximum amount of funding a community may receive?  
\$ \_\_\_\_\_

7c. Are there any restrictions on the use of the funds?  
—Yes —No?

If Yes, what are they?

8. Does your State use negotiation in its siting process?  
—Yes —No?

If Yes, please explain.

9. Are dispute resolution procedures used in your State to settle differences on siting issues?  
—Yes —No?

If Yes, please explain.

10. Is compensation to host communities used in your State?  
—Yes —No?

If Yes, please explain.

10a. Who is responsible for providing the compensation?

—The site developer

—The State

—Other, please explain

10b. What type(s) of compensation is used?  
—Cash payments

—Fees based on waste management activities

—Insurance

—Emergency training and equipment

—Operating concessions

—Other, please list:

11. Is your State authorized to build and/or operate a hazardous waste management facility?  
—Yes —No?

If Yes, please explain (also please indicate if you presently own or operate any facilities).

States Projecting a Capacity Shortfall in 1989 or 1995 Must Complete Form III, Mile-Stones and State Review.

States Only Projecting a Shortfall in 2009 Stop Here.

#### Form III: Milestones and State Review

Those states that have projected a shortfall for 1989 or 1995 must complete this form.

States should copy and complete the form and include it—along with additional documentation—in Part 4 of their CAP. Please copy this form if more space is needed to describe your State's milestones.

Name of Respondent \_\_\_\_\_

Telephone number \_\_\_\_\_

Address \_\_\_\_\_

1. States must complete a schedule of capacity development milestones for each type of management capacity needed. These milestones should reflect key decision dates for different types of capacity. It is not necessary to list specific facilities. Please use Worksheet VI-2 to report these milestones. However, states should also include milestones for approval of RCRA Part B permits for established facilities now operating under interim status.

The schedule of milestones in Worksheet VI-2 can include any steps in the State siting process that would indicate the development of needed capacity. For example, states with



developed programs could define their milestones by specifying dates by which the following activities should be completed:

- Enter in a multi-state hazardous waste planning effort.
- Designation of candidate sites.
- Letter of intent to develop a facility from a private party (or equivalent commitment from a public entity).
- Identification of host community.
- Permit submission.
- Draft permit approval.
- Final permit approval.
- Construction start.

• Operation start.

States without a formal siting program also should report the above activities. However, they also may indicate key milestone dates for developing their own siting program. This would include activities such as the following:

- Passage of siting legislation.
- Establishment of statewide siting criteria.
- Creation of a State board or authority.
- Development of siting regulations.

States are not restricted to the program elements suggested here, but are encouraged

to achieve a level of specificity in defining milestones.

2. What are the likely measures your State will take if you do not meet an anticipated milestone?

- The State will become more active in capacity development
- The State will change its siting process
- The State will temporarily increase exports
- Other, please explain

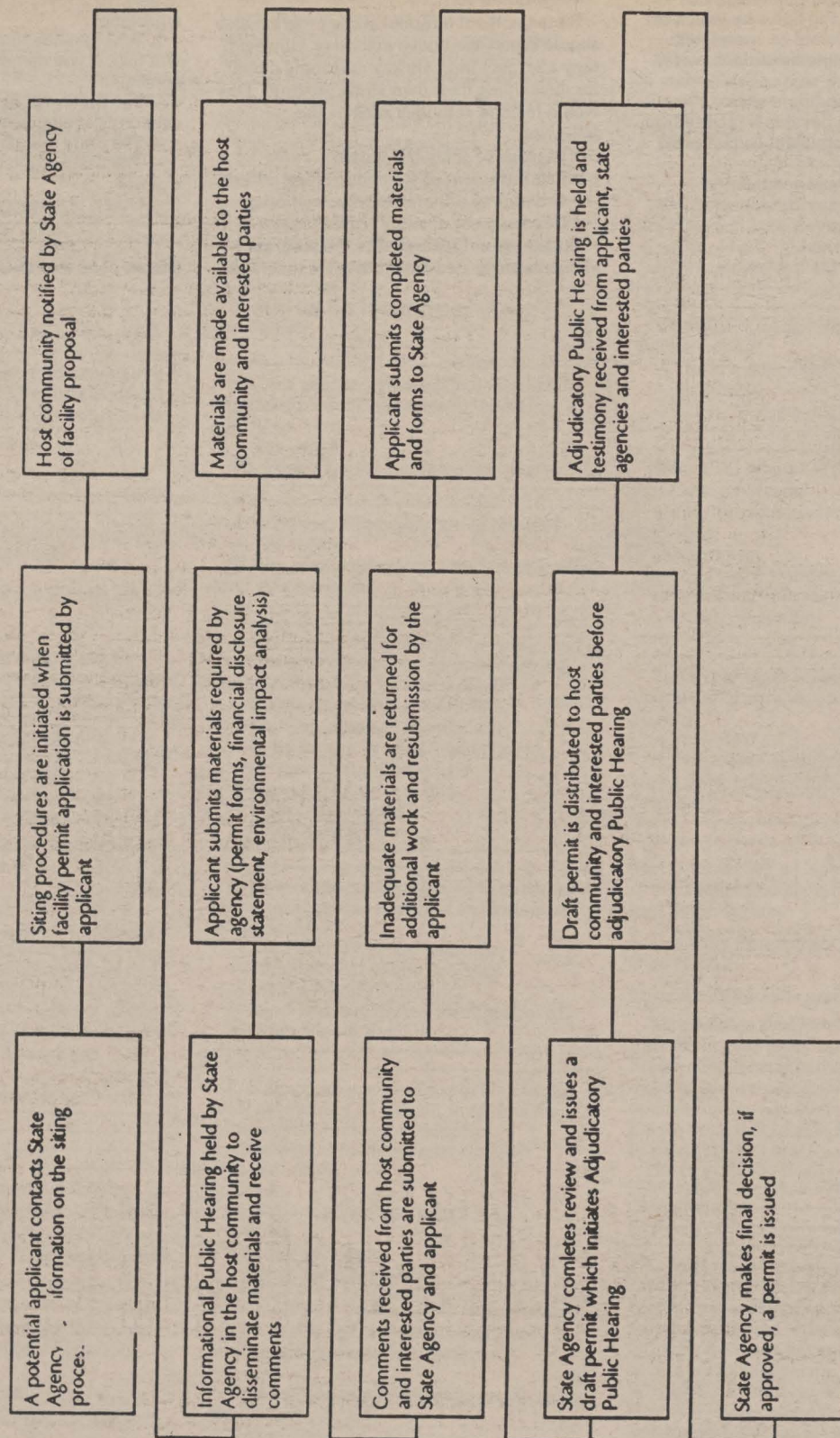
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# SITING PROCESS FLOWCHART

(See Form I, Question 3a.)





WORKSHEET VI-1.—TYPE OF  
MANAGEMENT CAPACITY NEEDED

[Tons per year]

Waste Management Categories	Projection Years		
	1989	1994	2009
1. Metals Recovery			
2. Solvents Recovery			
3. Other Recovery			
4. Incineration: Liquids Only			
5. Incineration: Solids/Sludges			
6. Energy Recovery: Kilns, Boilers, Furnaces			
7. Aqueous Inorganic Treatment			
8. Aqueous Organic Treatment			
9. Sludge Treatment			
10. Other Treatment			
11. Stabilization			
12. Land Treatment			
13. Landfill			
14. Deep-well Injection			
15. Other Disposal			

WORKSHEET VI-2.—CAPACITY  
MILESTONESType of management capacity (from list of 15  
categories): \_\_\_\_\_

Date	Milestone Description

## Definitions Section

**Siting Process.** This encompasses all elements of screening and evaluation involved in gaining approval for a specific hazardous waste facility at a specific site. The process includes site selection (when required), application for the various required state, national, and local permits, review of those applications by the appropriate government agencies in accordance with criteria previously specified, hearings, other forms of public involvement where applicable (local advisory committees, negotiation), submission and review of application amendments and revisions and final decision (approval or denial of the application).

**Siting Criteria.** These are constraints and guidelines specified by each state for evaluating the suitability of individual sites proposed for hazardous waste management facilities. These criteria can include outright prohibitions against siting facilities in certain environments (in 100 year flood plains)

or can be more general and list the variables that should be taken into consideration in evaluating proposed sites (population density and evacuation plans).

**Milestone.** This is a task or achievement to be accomplished by a specific point in time. Milestones can be stated quantitatively, such as tons of incineration capacity in operation by a certain date, or can be described qualitatively as unique policy components, such as implementation of certain defined procedures in a state siting program by a specified date.

**Needs Assessment.** This is an evaluation of current and future needs for hazardous waste management capacity. An assessment includes estimation of current and projected future waste generation, evaluation of current and imminent capacity, and calculation of capacity shortfalls or need for increased management capacity. It may also include an analysis of current and suggested state policies in hazardous waste management. A needs assessment provides a basis for state planning for future hazardous waste management, helping the state to choose among alternative approaches to satisfying demand for sound management capacity, and publicizes the state's market needs to private suppliers. A needs assessment is a statement of the state's position in waste management and does not necessarily lead to the state's active involvement in capacity expansion or site selection.

**Negotiation.** This consists of mediated and nonmediated interactions between the proponent of a specific hazardous waste management facility and representatives of the host community and other communities that are likely to be affected by the proposed facility. Negotiation can entail clarification and resolution of issues and concerns, development of alternatives, and specification of compensation and mitigation measures accepted by both parties.

**Compensation.** This includes services and payments made to a host community and other affected communities to help allay burdens imposed by their proximity to a hazardous waste management facility. Compensation can be cash payments (a given payment per ton processed) or provided in-kind (free clean-up of public hazardous waste spills, company maintenance of access roads).

**Mitigation.** These are measures

implemented to minimize the impact of a hazardous waste facility on the surrounding population and the environment. Whereas compensation is meant to balance burdens, mitigation is intended to reduce the burdens carried by host and nearby communities. Mitigation includes restrictions on operating hours and procedures, limitations on types and volumes of waste accepted, stricter engineering specifications, and construction of additional safety features.

**Preemption.** The state has the authority to make decisions in an area normally reserved for local or county government. That is, the state substitutes its authority for local or county authority in a specified policy area so that a decision normally left to lower level of government is taken at a higher level of government which is not required, under preemption, to defer to local preferences.

**Override.** The state has the authority to overrule decision made at a lower level of government. With regard to hazardous waste management, the local jurisdiction first evaluates the case and makes a decision; this decision can then be appealed to the higher authority which has the right to overturn the decision if it feels justified.

**Facility Expansion.** This is any increase in capacity of an existing hazardous waste facility. This can refer to construction of plant additions or substitution of new equipment for older equipment with a concomitant ability to handle greater volumes of waste.

**Siting Application.** This is a request for state agency approval of a specific hazardous waste facility on a designated site. Application contains engineering specifications of the facility, description of wastes and technical processes, information on the developer, as well as environmental and geological description of the site and surrounding area.

**Adjudicatory Hearing.** This is a public hearing to gather evidence and arrive at a decision on a proposed facility, structured like a judicial review. Interested parties present evidence to influence the final decision and are generally subject to cross examination as part of the process. Based on evaluation of the evidence presented, the hearing examiner rules on the suitability of the proposed facility (granting or denying a permit) or makes a recommendation to the permitting authority on whether or not the facility should be approved.



*Informational Hearing.* This is a public hearing for dissemination of information and airing of opinions on a proposed facility. Representatives of all interested parties can make presentations and discuss areas of concern, evidence is collected and turned over to permitting authorities for consideration; the hearing administrator presides and ensures proper procedure but does not rule on the proposed facility.

[FR Doc. 88-19414 Filed 8-30-88; 8:45 am]

BILLING CODE 6560-50-M



# Best Deal Paper

Wednesday,  
August 31, 1988

## Part IV

### Department of Health and Human Services

#### Office of Human Development Services

Fiscal Year 1989 Coordinated  
Discretionary Funds Program; Availability  
of Funds and Request for Applications;  
Notice



# DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

## Office of Human Development Services

[Program Announcement No. HDS-88-3]

### Fiscal Year 1989 Coordinated Discretionary Funds Program; Availability of Funds and Request for Applications

**AGENCY:** Office of Human Development Services, HHS.

- Administration for Children, Youth and Families
- Administration on Developmental Disabilities
- Administration for Native Americans

**ACTION:** Announcement of availability of funds and request for applications under the Office of Human Development Services' (HDS) Coordinated Discretionary Funds Program (CDP).

**SUMMARY:** HDS announces its Coordinated Discretionary Funds Program (CDP) for Fiscal Year 1989. Funding for HDS grants and cooperative agreements is authorized by legislation governing the discretionary programs of the three Program Administrations within HDS—the Administration for Children, Youth and Families (ACYF); the Administration on Developmental Disabilities (ADD); and the Administration for Native Americans (ANA). This year the Administration on Aging (AoA) and the National Center for Child Abuse and Neglect (NCCAN) will not be participating in HDS' CDP announcement. They will be issuing separate announcements later in the year.

This program announcement consists of three parts. Part I, the Preamble, discusses the purpose of the HDS CDP and lists the statutory funding authorities. Part II describes the programmatic priorities under which HDS solicits applications for funding of projects. Part III describes in detail how to prepare and submit an application.

All of the forms necessary to submit an application follow Part III. *No separate application kit is either necessary or available for submitting an application.* If you have a copy of this announcement, you have all the information and forms required to submit an application.

Grants will be made under this program announcement subject to the availability of funds for support of these activities.

**DATES:** The closing date for receipt of applications under this announcement is November 10, 1988.

**ADDRESSES:** Application receipt point: Department of Health and Human Services, HDS/Grants and Contracts Management Division, 200 Independence Avenue, SW., Room 724-F, Washington, DC 20201 Attn: HDS-88-3.

This program announcement is available as an electronic document through the HDS Computer Bulletin Board. Organizations equipped with computers and modems may link to the bulletin board by calling (202) 755-1642. Most popular communications programs will work. The correct settings are 8 data bits, one stop bit, no parity, 1,200 bits per second (BAUD).

**FOR FURTHER INFORMATION CONTACT:** Department of Health and Human Services, HDS/Office of Policy, Planning and Legislation, Division of Research and Demonstration, 200 Independence Avenue, SW., Room 724-F, Washington, DC 20201. Telephone (202) 755-4560. To provide 24-hour coverage, calls to this number may be answered by an answering machine.

#### SUPPLEMENTARY INFORMATION:

##### Part I—Preamble

##### A. Goals of the Office of Human Development Services (HDS)

The Program Administrations within the Office of Human Development Services (HDS), although different from one another in the specific populations they serve and the varied programs which they administer, share a common mission: to reduce dependency and increase self-sufficiency among our most vulnerable citizens. Emphasis on this mission, and progress toward it, will help more Americans live independent lives. In the end, it will reduce their need for services.

We have left an era when the trend was to assign to the Federal government an ever-increasing responsibility for identifying the needs for social services and for designing programs to meet those needs. Current public policy dictates that decisions are best made at the level of government closest to the target populations served—by elected State and local officials, by those who manage social services at the State and local levels, including Government officials, Tribal leaders, private organizations, voluntary organizations, schools or religious organizations. Therefore, HDS supports a policy that social service needs are more effectively and efficiently defined and addressed at the State and local community levels. With this in mind, HDS has identified three goals to help families and individuals achieve self-sufficiency and independence. These goals are:

- To increase family and individual self-sufficiency and independence through social and economic development strategies;
- To target Federal assistance to those most in need; and
- To improve the effectiveness and efficiency of State, local and tribally-administered human services.

In order to be considered for funding each applicant must describe activities that meet the goals of HDS.

The National Center on Child Abuse and Neglect (NCCAN), an agency of the Administration on Children, Youth and Families (ACYF), and the Administration on Aging (AoA) have in the past participated in the HDS Coordinated Discretionary Funds Program (CDP). However, because of recent legislation, these two programs will not be included in this solicitation.

As in previous years, NCCAN must solicit public comment on proposed research and demonstration projects in the area of child abuse and neglect. The timing of the reauthorization of the Child Abuse Prevention and Treatment Act, signed into law on April 25, 1988, precluded participation in this announcement. NCCAN will publish a separate request for comment and a separate grant announcement for FY 1989. The National Center may be contacted directly at the following address: National Center on Child Abuse and Neglect, Children's Bureau, Administration for Children, Youth and Families, Donohoe Building, Room 2030-D, 400 6th Street SW., Washington, DC 20024.

*Contact person:* Susan A. Weber, Telephone: (202) 755-7600.

AoA will also publish a separate grant announcement in the fall of 1988. AoA should be contacted directly at the following address for information regarding its announcement: Administration on Aging, Office of Program Development, Room 4256, Cohen Building, 300 Independence Avenue SW., Washington, DC 20201.

*Contact person:* Ed Marcus, Telephone: (202) 245-0441.

##### B. The HDS Program Administration

Below is a brief description of the HDS programs related to this solicitation for applications.

##### Administration For Children, Youth and Families

The Administration for Children, Youth and Families (ACYF) serves as the focal point within the Federal government for programs, activities and concerns designed to improve the quality of life for children, youth and



families. ACYF administers the following programs which relate to discretionary grants under this announcement:

÷ *Head Start* provides comprehensive services primarily to low-income preschool children, age three to the age of compulsory school attendance, and their families. Head Start programs provide comprehensive educational health, nutritional, social and other services.

÷ *Child Welfare Services* assists State public social service agencies to provide services with the goal of keeping families together. State services include preventive intervention; services to develop alternative placements such as foster care or adoption; and reunification services so that children can return home if at all possible.

÷ *Child Welfare Training* provides discretionary grants to public and private nonprofit institutions of higher learning to develop and improve educational and training programs as well as resources for child welfare services providers by upgrading their skills and qualifications.

÷ *Adoption Opportunities* provides discretionary demonstration grants to eliminate barriers to adoption and find permanent homes for children, particularly children with special needs.

÷ *Runaway and Homeless Youth* addresses the crisis needs of runaway and homeless youth and their families through the establishment or strengthening of community-based programs providing temporary shelter, counseling, and aftercare services. It also provides support to coordinated network grants designed to share information, expertise, and resources among service providers; and to a toll-free, 24-hour National Runaway Switchboard which serves as a neutral channel of communication between young people and their families as well as a source of referral to needed services.

#### Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD), provides assistance to States and public and private nonprofit agencies and organizations to assure that all persons with developmental disabilities can receive the services, assistance and other opportunities necessary to enable them to achieve their maximum potential through increased independence, productivity and integration in the community. Recent changes made by the Developmental Disabilities and Bill of Rights Act of 1987 emphasized that persons with developmental disabilities

include those with severe functional limitations attributable to physical impairments, mental impairments and combinations of physical and mental impairments. In addition, ADD seeks to enhance the role of the family in assisting persons with developmental disabilities to achieve their maximum potential as well as ensuring the protection of their legal and human rights. ADD funds projects of national significance to States and public and private nonprofit agencies for projects relating to persons with developmental disabilities.

#### Administration for Native Americans

The mission of the Administration for Native Americans (ANA) is to promote the goal of social and economic self-sufficiency for American Indians, Native Hawaiians and Alaska Natives. ANA defines self-sufficiency as the level of development at which a Native American community can control and internally generate resources to provide for the needs of its members and meet its own short and long range social and economic goals.

#### C. Goals Of The HDS Coordinated Discretionary Funds Program and Its Cross-Program Focus

For the past seven years, the HDS CDP has brought the major portion of the research and demonstration funding under one announcement.

The CDP allows HDS to expand the boundaries of human service knowledge by drawing on the testing new ideas, disseminating the findings, and incorporating the same new ideas in a "cross-program" approach within HDS. In this way, the CDP becomes an integral part of the policy making process.

In addition to facilitating "cross-program" approaches, these research and demonstration projects provide the basis for modifying current policy and practice in order to address changing social service needs. The CDP allows HDS, together with States, nonprofit, voluntary and philanthropic organizations, and local communities, to analyze trends and anticipate social issues that will become paramount in the future; and to improve the effectiveness and efficiency of human services by developing innovative alternate techniques and approaches to address social service needs. Additionally, the CDP makes possible a coordinated use of information systems in a more efficient and less costly grant making activity than would be possible if done independently.

The HDS CDP is based on the principle that the well-being of a specific

target population is the responsibility of individuals, families, and the communities in which the target populations live. Human service needs are best defined, as well as more effective and efficiently served, through institutions and organizations at the level closest to the individual-State, Tribal, and local governments, public agencies, businesses, private sector and voluntary organizations, religious institutions, communities, and families.

HDS is primarily interested in providing funds for projects offering immediate impact, or which can become self-sustaining in a short period of time. The CDP is not intended to provide funds for ongoing social services, or to serve as a supplemental source of funds for local activities which need operating subsidies.

Through the CDP, two or more Program Administrations within HDS have jointly addressed issues or needs in which each has program and discretionary interest. For example: early childhood education has program/discretionary interest not only to ACYF's Head Start program, but also for ADD because it deals with children who may have developmental disabilities. More than a few such social service issues and needs fit into such a "Cross-Program" category.

In addition to those topics identified as major agency-wide interests of HDS in the crosscutting section, there are several other priority areas which address multi-service system issues. Examples are the priority areas targeting on: Children in homeless families living in shelters and the mental health needs of developmentally disabled children being served by the child welfare system.

#### D. Youth 2000 Initiative

Some of the priority areas in this announcement relate to a special initiative which was launched in July 1986 as a joint effort between the Department of Health and Human Services and the Department of Labor. Designed as a nationwide "call to action" between now and the year 2000, the purpose of the initiative is to enlist the involvement of all sectors of society in helping vulnerable and at-risk youth achieve social and economic self-sufficiency and fulfill their potential as viable, contributing members of society. The goals of Youth 2000 are:

- To increase the employability and self-sufficiency of young people;
- To improve their literacy and educational attainment;
- To reduce the incidence of teenage pregnancy;



- To promote lifestyles free from alcohol and other substance abuse; and
- To reduce violent and accidental injuries and deaths among young people.

Within HHS, the Office of Human Development Services has been assigned the legal responsibility for managing and coordinating this initiative under the Secretary's Agenda for promoting the "Future of the Family." The Public Health Service has the lead responsibility for the Youth 2000 goals related to reducing the youth mortality rate. The Family Support Administration has the lead responsibility for the Youth 2000 goal related to reducing the incidence of teenage pregnancy.

#### E. Technical Assistance Workshops for Prospective CDP Applicants

Technical assistance workshops will be held in Washington, DC, and several other cities to provide guidance and technical assistance to prospective applicants. The proposed schedule for the three-hour workshops is as follows:

City	Date/time/location
Albuquerque, NM	September 29/1:00 p.m., Doubletree Albuquerque, 201 Marquette, NW.
Harlingen, TX	September 22/1:00 p.m., Sheraton Harlingen Inn, Expressway 83 at Stuart Place Road.
New York, NY	October 5/9:30 a.m., Room 305 (3rd Floor) 26 Federal Plaza, Federal Office Building, Junius Scott, (212) 264-3472.
Portland, OR	October, Ed Singler, (206) 442-2430.
Seattle, WA	October, Ed Singler, (206) 442-2430.
Tulsa, OK	September 27/1:00 p.m., Sheraton Inn Tulsa Airport, 2201 North 77th East Ave.
Washington, DC	October 6 and October 11, 2:00 p.m., Auditorium, Hubert H. Humphrey Building, 200 Independence Avenue, SW.

#### F. Dissemination Conferences on CDP Projects

HDS annually sponsors Dissemination Conferences in Washington, DC and around the country to showcase the findings and products of funded projects in specific topical areas. This year's workshops will be held in the following cities:

City	Date	Contact and telephone
Albuquerque, NM	Sept. 29 9:00 am	Eddie Falcon, (214) 767-6596. Doubletree Albuquerque, 201 Marquette, NW.
Braintree, MA	Jan. 1989	Bob Briggs, (617) 565-1138.

City	Date	Contact and telephone
Chicago, IL	Oct. 2-5 Dec. 8-9	Hich Yamagata, (312) 353-8322.
Denver, CO	Oct. 26-29	Harry Frommer, (303) 844-2622.
Harlingen, TX	Sept. 29	Sheraton Harlingen Inn, Expressway 83 at Stuart Place Road.
Kansas City, MO	Aug. 23	Dan Sakata, (816) 426-3981.
Portland, OR	Feb./Mar. 1989	Judith Wood, (206) 442-2430.
Sacramento, CA	Oct. 20	George Buford, (415) 556-7408.
Seattle, WA	Oct. 22	Judith Wood, (206) 442-2430.
Tulsa, OK	Sept. 27, 9:00 am	Sheraton Inn Tulsa Airport, 2201 North 77th East Ave.

In order to be placed on a mailing list for information about other upcoming workshops, send a name and mailing address to Richard Jakopic, Division of Research and Demonstration/OPPL, Room 721B, Office of Human Development Services/HHS, 200 Independence Avenue SW., Washington, DC, 20201.

#### G. Statutory Authorities

The individual statutory authorities under which grants and cooperative agreements will be awarded through the HDS Coordinated Discretionary Funds Program are as follows:

- Head Start: Head Start Act, as amended (42 U.S.C. 9831 *et seq.*);
- Child Welfare Services: section 426 of the Social Security Act, as amended (42 U.S.C. 626);
- Runaway Youth Program: Runaway and Homeless Youth Act, as amended (42 U.S.C. 5701 *et seq.*);
- Adoption Opportunities: Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, as amended (42 U.S.C. 5111 *et seq.*);
- Native Americans: Native American Programs Act of 1974, as amended (42 U.S.C. 2991 *et seq.*);
- Developmental Disabilities Assistance and Bill of Rights Act of 1987, as amended (42 U.S.C. 6000); and
- Family Violence Prevention and Services Act, as amended (42 U.S.C. 10401 *et seq.*).

#### Part II—Priority Areas

This part contains the information needed in order to successfully apply for funding. Failure to comply with the eligibility criteria and minimum requirements of a particular priority area will result in an application being screened out.

HDS experience has shown that an application which is broad and general in concept does not score as well as one which is directly responsive to and which addresses the concerns of a specific priority area. Applicants should carefully read each relevant priority area description before they begin to write their narratives.

Applicants must identify under which specific priority area they wish to have their application considered. Applications that are general in nature or which do not specifically address the "Minimum Requirements" section of a priority area will be screened out. These and other screening criteria can be found in Part III. C., Application Screening Criteria.

Applications that are developed jointly by State, local and community-based social services agencies, foundations or universities are encouraged, since this helps to coordinate local resources and assure continuation of the project after Federal funding ends. On all applications developed jointly, one organization must be identified as the lead organization and applicant.

#### A. Eligible Applicants

Each priority area description contains information about the types of organizations which are eligible to apply under that priority area. Since eligibility varies from priority area to priority area, it is critical that you read the "Eligible Applicants" section under each priority area carefully. Applications from organizations that do not meet the eligibility restrictions for the specific priority area will not be reviewed. Only organizations, not individuals, are eligible to apply under any of the priority areas.

For-profit organizations may be eligible for certain grants to be found under the authority of the Native American Programs Act, the Runaway and Homeless Youth Act and the Head Start Act. For-profit organizations may also participate as contractors under grants to eligible applicants on all projects.

Nonprofit agencies which have not previously received HDS support must submit proof of nonprofits status with their grant applications. This can be done either by making reference to its listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations or by submitting a copy of its letter from IRS (IRS Code section 501 (c)(3)). HDS cannot fund a nonprofit applicant without acceptable proof of its status.



**B. Available Funds**

The availability of funds for FY 1989 is dependent on an enactment of an appropriations Act. HDS expects to award new grants and cooperative agreements resulting from this announcement during the second and third quarters of FY 1989.

Applicants should be aware that HDS receives 2,000 to 3,000 applications annually in response to the CDP announcement. HDS expects to make approximately 200 new awards pursuant to this announcement. The Federal share of these projects ranges from \$10,000 to a maximum of \$150,000 per budget period (except where noted in the priority area descriptions), with an average award of \$100,000.

Applications with budgets that exceed the Federal share listed under the applicable priority area will be automatically screened out. Actual awards may vary widely. HDS encourages eligible applicants requesting smaller awards (or awards for projects of less than 12 months duration) to apply. Unless specifically stated in the priority area description, there is no predetermined number of applications to be funded in the various priority areas.

**C. Indexes of Priority Areas**

To simplify use of this announcement, two indexes are presented below for easy reference by potential applicants. The first index lists the priority areas which relate to specific key words. The second index lists the priority areas in numerical order.

**FY 1989 Key Words Index.**

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**List of the FY 1989 Priority Areas****I. Crosscutting**

- 1.1 Challenge Grants to Community Foundations/Agencies to Coordinate With Public, Private and Tribal Educational Agencies for the Prevention of Youth Problems
- 1.2 Prevention and Treatment of Alcohol Abuse Among Minority Youth
- 1.3 Collaborative Training Efforts to Support Children with More Severe Handicaps in Head Start
- 1.4 Training and Technical Assistance for Family Violence Prevention and Services Programs

**II. Administration for Native Americans**

- 2.1 Innovative Community Approaches to Entrepreneurial Activity with Native American Youth
- 2.2 Development of Models Applying the Enterprise Zone Concept to Native Americans
- 2.3 Resolving Alcohol and Substance Abuse within Native American Communities

**III. Administration on Developmental Disabilities**

- 3.1 Early Intervention
- 3.2 Family Support Practices
- 3.3 Technical Assistance Projects to Assist State Planning Councils, University Affiliated Programs, and the State Protection and Advocacy System
- 3.4 Community Integration

**IV. Administration for Children, Youth and Families**

- 4.1 Adoptive Parent Groups-Partners in the Adoption of Special Needs Children
- 4.2 Special Needs Adoption Services and the Mental Health System
- 4.3 Collaboration Among Special Needs Adoption, Mental Health and Developmental Disabilities Service System
- 4.4 Child Welfare Training
  - 4.4.A. Traineeships
  - 4.4.B. In-Service Training
  - 4.4.C. Special Grants for Indian Child Welfare Traineeships and In-Service Training
  - 4.4.D. Special Grants for Historically Black Colleges and Universities Traineeships and In-Service Training
  - 4.4.E. Collaboration Between Schools of Social Work and Child Welfare Agencies
- 4.5 Liability and Legal Issues in Child Welfare and Child Abuse
- 4.6 Collaborative Effort to Establish Developmental Child Care for Children in Homeless Families

- 4.7 Adaptation of Early Childhood State-of-the-Art Methods, Materials and Technologies for Head Start
- 4.8 Development and Testing of Integrated Treatment for Dysfunctional Families of At-Risk Youth by Runaway and Homeless Youth Centers
- 4.9 Transitioning Homeless Youth from Emergency Homeless Centers to Independent Living Programs and Self-Sufficiency

**I. Crosscutting Priority Area Descriptions****1.1 Prevention of Pre-Teen Problems within Educational Systems****Eligibility Criteria:**

(1) Applicants must qualify as community foundations or community agencies. This includes nonprofit community-based Native American organizations.

(2) Applicants must be able to set aside \$2 for every \$1 of Federal funds in an interest bearing account for the life of the Federal grant.

(3) Community agencies which apply must have the capability of establishing an endowment for this specific grant, either within their own organization or through a partnership with a local community foundation or educational system.

**Purpose(s):** to enable the community foundations and agencies to form viable coalitions with local school systems and other social service agencies to address the numerous problems of pre-teens within the educational systems (truancy, school dropouts, drug and alcohol abuse). Once the period of Federal funding has ended, the funds set aside along with accrued interest would be available to continue the work of the coalition. The coalitions should specifically target high-risk pre-teens, ages 9-12.

HDS intends to give challenge grants to small to medium-sized Community Foundations/Agencies to coordinate with public, private and educational agencies and Indian-controlled academic institutions to stimulate the development of restricted endowments. These endowments will be used to support the planning and implementation of collaborative efforts aimed at preventing pre-teen problems within the educational systems.

**Duration of projects:** Not to exceed three years.

**Federal Share of Project Costs:** Not to exceed \$50,000 per project per year.

**Minimum Requirements for Project Design:** In order to successfully compete under this priority area, the application should:



—Identify the public, private, Tribal educational agencies or Indian-controlled academic institution as well as other local community agencies (Boys and Girls Clubs, for example) that are collaborating with the community foundation, community agency or nonprofit community-based Native American organization. The application must provide evidence of the collaboration (letters of commitment).

—Discuss the extent of the collaboration effort (commitment of resources, identification and distribution of responsibilities, etc.). Collaboration is defined as the substantive involvement of at least three major organizations within a community.

—Discuss how this collaborative network will provide for early identification and intervention to prevent dysfunctional behaviors for pre-teens ages 9-12.

—Provide a detailed discussion of the local network, including a description of the services to be offered, criteria for determining the pre-teens to be served, qualifications of provider(s), and costs involved.

—Explain how this network differs from other pre-teen intervention services available within the community and what makes it innovative.

—Discuss an evaluation methodology to determine the effectiveness of the collaborative network.

**Background Information:** Statistics abound on the conditions of troubled youth—levels of illiteracy, poor school performance, failure to complete high school, drug and alcohol abuse, unemployment, suicides and homicides.

Attempted solutions to these problems have been typically reactive and targeted on youth during their later teen years. Little attention has been given to early identification and intervention at the primary and junior high school levels to prevent future teen problems.

Schools have generally viewed their role as being educational, exclusive of health or social services. Early identification by schools of children at-risk and a coordinated approach to intervention or remediation can best be achieved through strong working relationships and interagency agreements among the school, health, social service agencies and local community foundations.

Local community foundations and/or community agencies should have the latitude of pulling together these and other divergent resources to develop a local network that can serve all high-risk children in their community, regardless of the school they attend.

## 1.2A Prevention and Treatment of Alcohol Abuse among Minority Youth

**Eligibility Criteria:** State, local, Tribal or private organizations/agencies, Alaska Native Villages, nonprofit community based Native American organizations or Indian-controlled academic institutions. These organizations must have significant experience in dealing with one or more minority groups.

**Purpose:** To develop innovative models which use culturally sensitive intervention, treatment and/or prevention techniques aimed at minority youth who abuse alcohol.

**Duration of projects:** Not to exceed 2 years

**Federal Share of Project Costs:** Not to exceed \$50,000 per year

**Minimum Requirements for Project Design:** In order to successfully compete under this priority area, the application should:

—Indicate the minority(ies) being addressed; provide a statistical overview of alcohol abuse within the culture; provide specific statistics for the minority population within the geographic service area.

—Identify cultural and/or sociological factors which encourage alcohol abuse and inhibit the effectiveness of current prevention and/or intervention and treatment techniques.

—Outline the proposed intervention, treatment and/or prevention techniques aimed at the minority youth group. Treatment by existing programs is encouraged, rather than the development of new services to be supported by this grant. It should include a discussion of how this methodology is culturally sensitive.

—Identify any partnerships or coalitions that are formed to undertake this demonstration project. The types and amount of participation and commitment by different groups should be clearly outlined.

—Describe how the proposed project builds upon the existing service delivery system and expands its capabilities, if appropriate.

—Discuss an evaluation methodology to determine the effectiveness of the project and to validate the local statistical data used.

—Describe how the project will continue after Federal funds are exhausted. HDS will give preference to applications which include this information.

**Background Information:** The 1986 *Report on the Secretary's Task Force on Black and Minority Health* clearly stated that there are major problems involving minority youth and alcohol

which have not been sufficiently addressed. The Report continues, "there is also emerging consensus among scientists and clinicians that alcoholism and related problems are coupled, and involve a wide range of medical, social, and legal problems which impact different populations at risk in different ways."

Studies on the impact of alcoholism within Black families show that intervention techniques which are effective within non-minority families fail with Black families. Similarly, the Secretary's Report found that any intervention strategies must be sensitive to the Black culture.

Over 50 percent of the Hispanic population is under the age of 25 and the median age is getting lower. Alcohol consumption is widely regarded within the Hispanic community as a sign of "machismo." Male adolescents are particularly susceptible not only to peer pressure but also to adult pressure to abuse alcohol. Alcohol is also used to cope with stresses caused by unemployment, alienation from the surrounding society, separation from family, discrimination in employment and housing. The Secretary's Report urges the targeting of prevention efforts on Hispanic youth and young adult males.

There have been extensive studies and on-going demonstration projects on the alcohol problem within the Native American and Alaska Native populations. HDS is particularly interested in developing culturally sensitive intervention and/or prevention strategies which are focused on Native American youth. For example, in the Alaska Native community, alcoholism can be considered the number one health problem among Alaskan youth. One major obstacle in providing intervention and treatment is the distance between the source of help and the youth.

During the last couple of years the Administration on Native Americans (ANA) has funded demonstration grants in the area of alcohol prevention among all segments of the Native American population. We are now interested in funding culturally sensitive prevention and/or intervention strategies for Native American youth in either urban and rural areas that build on this prior work.

The 1986 *Report on the Secretary's Task Force on Black and Minority Health* can be obtained by contacting: DHHS/Public Health Service, Office of Minority Health, Room 118-F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. (202) 245-0020.



**1.2B Prevention and Treatment of Alcohol Abuse Among Native American Youth in Runaway and Homeless Youth Centers**

Eligibility Criteria: Runaway and Homeless Youth Centers, Alaska Native Villages, nonprofit community based Native American organizations or Indian-controlled academic institutions.

Purpose: To build upon and adapt the experience of 6 projects funded in 1986 by ACYF to "Improve Shelter Staff Capacity to Deal with Problems of Alcohol Abuse Among Runaway and Homeless Youth" to benefit Native American youth.

Duration of projects: Not to exceed 2 years.

Federal Share of Project Costs: Not to exceed \$50,000 per project per year.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Describe how the original project design will be used including where adaptation is called for. The need for adaptation should be documented and the actual adaptation required should be outlined.

- Identify any partnerships or coalitions that are to be formed to undertake this demonstration project. The types and amount of participation and commitment by different groups should be clearly outlined.

- Describe how the proposed project builds upon the existing service delivery system and expands its capabilities, if appropriate.

- Discuss an evaluation methodology to determine the effectiveness of the project and to validate the local statistical data used. Time for testing and evaluation must be included in the project design.

- Describe how the project will continue after Federal funds are exhausted. HDS will give preference to applications which include this information.

Background Information: The Administration for Children, Youth and Families funded six projects during Fiscal Year 1986 to "Improve Shelter Staff Capacity to Deal with Problems of Alcohol Abuse Among Runaway and Homeless Youth." These projects developed programs and strategies, materials and staff training curricula. HDS is interested in applications that will adapt the models along with the training materials for staff of youth centers or other institutions that serve predominantly Native American youth. Information on this model can be obtained from: National Resource Center for Youth Services, University of

Oklahoma, 131 North Greenwood Avenue, Tulsa, Oklahoma 74120.

**1.3 Collaborative Training Efforts to Support Children with More Severe Handicaps in Head Start**

Eligibility Criteria: Only Head Start grantees and delegate agencies or University Affiliated Programs (UAPs) for the developmentally disabled may apply. Applicants must show that this is a collaborative partnership among a Head Start grantee, a UAP and a Resource Access Project (RAP) from project design through implementation. It is also desirable to show active participation of a Parent and Child Center (PCC) serving infants, toddlers and their parents.

Purpose: To increase the capability of Head Start grantees to serve more severely handicapped children through collaborative support efforts involving UAPs and RAPs. These Head Start/UAP/RAP collaborations should include multiethnic, multicultural populations in rural or in urban areas. Products from the project should include training materials for Head Start staff which will enhance their capacity to serve children with more severe handicaps.

Several UAPs currently have relationships with Head Start grantees to provide training for Head Start staff to increase their capacity to serve handicapped children. HDS would consider funding both existing UAP/Head Start collaborations as well as new collaborations.

The applicant must be willing to work with an independent contractor which will be selected at a later date and funded by HDS. The independent contractor will be responsible for evaluating the funded projects. An integral part of the evaluation will be the collection and analysis of data on costs, services, staffing and training materials.

Duration of projects: Not to exceed 2 years.

Federal Share of Project Costs: Not to exceed \$50,000 per project per year.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Describe the combined expertise and resources of the Head Start grantee, the UAP and the RAP to provide training to Head Start teachers, aides, and parents that will enable them to work more effectively with more severely handicapped children. Evidence of this collaboration in both project design and implementation must be provided as well as collaboration with a PCC and Protection and Advocacy agency, if appropriate.

- Describe the level of disability of the children to be served.

- Reflect informed family involvement in the development and implementation of the Individual Education Plan for preschoolers and the Individual Family Service Plan for infants and toddlers.

- Specify collaborative activities with other related public and private agencies (State Developmental Disabilities Councils, Protection and Advocacy Agencies, crippled children's services, local disability affiliates of organizations such as the United Cerebral Palsy or the Association for Retarded Citizens, community mental health centers, local education agencies, etc.). Their levels of involvement must be described and documented.

- Describe how other sources of special assistance or related services for which the children or programs are eligible will be located and used, such as crippled children's services, Medicaid, or third party insurers. Donated volunteer assistance should be documented also, as it is a factor in determining which costs must be incurred directly and which can be accessed at no or little cost to Head Start. For example, Head Start uses community resources and seeks to receive services which other agencies provide prior to expending Head Start funds.

- Describe the types, numbers and level of disability for each of the children currently being served by the Head Start grantee(s) as well as the target number of children to be enrolled by specific severe handicap.

- Describe the role(s) of the Head Start agency, UAP and RAP in terms of support (financial and in-kind) and training.

- Ensure that services for children with handicapping conditions in the least restrictive environment should be the goal of the project, including the provision of on-site training and intensive follow-up assistance by the UAP and RAP.

Background Information: The 1986 Amendments to the Education of the Handicapped Act, Pub. L. 99-457, established additional incentives to provide services for all children with handicaps below school age by 1990-1991. To provide Federal leadership in the implementation of this law, the Office of Special Education and Rehabilitative Services in the Department of Education, ACYF and ADD in HDS, and the Division of Maternal and Child Health (MCH) in the Public Health Service signed a Memorandum of Understanding to



mobilize and access national resources for the implementation of Pub. L. 99-457.

The agencies signing this Memorandum of Understanding agreed to develop and utilize a coordinated interagency approach to sharing information and resources in the areas of regulation, program guidance and priorities; parent participation; identification of handicapped children, materials and resources; and training and technical assistance. The implementation of these projects by a coalition of Head Start grantees, UAPs, and RAPs should address all of these areas. MCH will participate with HDS in funding the grants to be awarded under this priority area.

ACYF's interests in this priority area include Head Start, the PCCs and RAPs. The Head Start program serves children from three to the age of compulsory school attendance, 12 percent of whom are handicapped based on national statistics. Approximately 60 percent of these children have speech handicaps. Head Start has a successful history of serving mildly disabled children. This priority area is designed to increase Head Start's capacity to serve children with more severe handicapping conditions than they are now able to serve.

ACYF also funds PCCs to serve infants and toddlers from birth through age three with the parent serving as the main intervention agent to foster the child's development. To assist Head Start grantees and PCCs in serving children with handicaps and their families, ACYF supports a national network of training and technical assistance providers, the RAPs.

Both MCH and ADD support UAPs which provide interdisciplinary training for personnel, demonstrate exemplary services and disseminate findings and identify future research needs. There are currently 48 UAPs and satellites funded by either MCH or ADD or both in 40 States and the District of Columbia. A listing of UAPs and satellites is available from the American Association of University Affiliated Programs, (301) 588-8252.

#### 1.4 Training and Technical Assistance for Family Violence Prevention and Services Programs

Eligibility Criteria: National, multi-State, or State Coalitions or Councils of State Directors of Family Violence Programs. To the extent possible, applications should include as participants the Directors of Family Violence Prevention and Services Programs for Indian Tribes located in the State(s) for which application is made.

Purpose: To provide training and/or technical assistance on a multi-State basis in the conduct of both State and Indian Tribal programs for the prevention and treatment of family violence. In addition to the provision of training and technical assistance, an expected outcome is the establishment of an on-going process of coordination and peer assistance among participants that will continue after the conclusion of the Federal grant.

Duration of projects: Not to exceed one year.

Federal Share of Project Costs: Not to exceed \$15,000 per project.

HDS plans to fund no more than 5 projects in this priority area with Federal funding of between \$10,000-\$15,000 for each project. HDS may give preference to those multi-State efforts which were not funded in FY 1988. Information on these States can be obtained from William Riley at (202) 245-2892. A directory of contact persons for Indian Tribal family violence programs is also available from Mr. Riley.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Be responsive to the identified priority needs of the participating State coalitions including Indian Tribal family violence programs, if any. Therefore, the application must clearly articulate those needs and show sufficient expertise to provide the training and technical assistance.

- Clearly describe the training and technical assistance to be provided, e.g., the exchange of information on model programs, management and operational techniques, community relations, fund raising and specialized services. The applications must also describe the methods to be used to accomplish the training and technical assistance, e.g., the combined use of workshops, the distribution of informational materials and teleconferencing.

- To the extent possible, describe how they will utilize the considerable expertise currently available at the national, State or local levels.

- Describe their plans for establishing an on-going process of coordination and peer assistance among the parties involved that will continue after Federal funding.

Background: Programs to prevent and treat family violence have been established in all States, typically by local public and nonprofit private organizations (including religious, charitable and voluntary associations). These programs provide emergency shelter and related assistance to victims

of family violence and their dependents in safe houses or shelters. Adjunct services and treatment programs may also be available in the community. These services include counseling and self help services to victims, dependents, and abusers, and health care services, such as, drug and alcohol abuse treatment.

Section 305(b)(3) of the Family Violence Prevention and Services Act requires that the Department provide training and technical assistance in the conduct of programs for the prevention and treatment of family violence.

## II. Administration for Native Americans

### 2.1 Innovative Community Approaches to Entrepreneurial Activity with Native American Youth

Eligibility Criteria: Applicants must be American Indian Tribes, Alaska Native Villages, Hawaiian Native groups or other Native American organizations including Indian-controlled academic institutions.

Purpose: To operate a formal program through which work-related skills are transmitted in the classroom, through summer activities and/or through extra-curricular activities geared to business operations. Such projects can provide for skills acquisition not only for the youth themselves but also for the community's need for persons with entrepreneurial orientations and management skills. Projects can include a component addressing the exposure to business opportunities or business activities.

Duration of projects: Not to exceed 3 years.

Federal Share of Project Costs: Not to exceed \$200,000 per project for the total 3-year project period

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Promote entrepreneurship among Native American junior and/or senior high school students.

- Include enterprises that are student operated and that include the expectation of income producing enterprises. These activities may include the development of a service needed by the community or the organization, co-ops providing for the needs of the participants, and/or individual or group-managed businesses for which markets may be identified.

- Include an implementation plan with specific measurable outcomes such as a decline in the rates of school drop out or increased competency in employment-related skills among the



population identified, to name a few examples.

—Include a budget for each year for which Federal funding is requested.

—Include and document the collaboration with local resources such as local banks, Private Industry Councils, colleges, universities, etc.

—Describe how it relates to programs in boarding schools, public schools or reservation day schools or after school type activities unrelated to the school setting.

**Background Information:** The Department's 1980 report entitled "Indian People in Indian Lands" states that the Native American population is younger than the overall population of the country and that Native Americans have the highest birth rate. More than one out of three Native Americans is under the age of twenty.

Recent studies have pointed out that the lack of entrepreneurial and management know-how among the Native American community is a barrier to economic development. Reservation economic development in particular is still in an embryonic stage of development offering tremendous economic potential for the future. Since a large segment of the Native American population is young and will provide the leadership of tomorrow, an entrepreneurial experience for training future leaders is critical.

Few Native American children have been exposed to entrepreneurial activity through their school experience or through community role models. Native American youth have not had the opportunity to develop entrepreneurial and management skills through traditional avenues.

HDS funded 4 projects under this same priority area in 1987 and 3 in 1988 because of the continuing concern about the need to develop entrepreneurial skills among young Native Americans as well as the need for a variety of models for replication.

Applicants are encouraged to contact Sharon McCully, (202) 245-7776, for information concerning specific programmatic issues in this priority area.

## 2.2 Development of Models Applying the Enterprise Zone Concept to Native Americans

**Eligibility Criteria:** Eligibility is restricted to Federally-recognized Indian Tribes, Alaska Native villages as defined in the Alaska Native Claims Settlement Act, nonprofit Alaska Native Regional Corporations, Alaska Native Indian communities as recognized by the Bureau of Indian Affairs and urban Indian organizations.

**Purpose:** To test the enterprise zone concept of attracting business and investment capital to an economically-distressed area primarily through packaging and marketing of local resources, governmental attributes and certain location advantages. Enterprise zones seek to increase employment in targeted locations by removing tax and regulatory obstacles to business.

ANA is interested in addressing the enterprise zone concept in two parts. Section I focuses on Federally recognized Tribes and Section II looks at urban Indian organizations. Alaska Native villages, Alaska Native Indian communities and nonprofit Alaska Native Regional Corporations may refer to Sections I and II where appropriate. Please refer to Background Information below for a full discussion of Parts I and II.

**Duration of projects:** Not to exceed 3 years.

**Federal Share of Project Costs:** Not to exceed \$275,000 per project for the total 3-year project period.

**Minimum Requirements for Project Design:** In order to successfully compete under this priority area, the application should:

—Address the planning and setting up of an enterprise zone structure and the implementation of a zone.

—Show that the project will be completed or self-sustaining or supported by other than ANA funds at the end of the project period.

—Demonstrate that financing for the enterprise zone will be secured or will soon be in place at the end of the project period.

—Include a budget for each year for which Federal funding is requested.

**Background Information:** The concept of enterprise zones as a means of attracting business and capital to Indian reservations is getting increased attention. American Indian Tribes have many of the attributes conducive to enterprise zone application, such as tax immunities, jurisdictional prerogatives, and natural and human resources.

HDS funded 5 projects in FY 1987 to test the application of the enterprise zone concept on reservations. These projects are well underway with code development and the testing and exploration of incentives to attract industry. In FY 1988 the enterprise zone concept was expanded to apply to urban settings and the Alaska Native community, as well as reservations. Five projects were funded in FY 1988 and this effort will continue in FY 1989.

## Section I

Tribes, like State governments, have the necessary attributes of sovereignty

to create their own enterprise zones prior to passage of Federal enterprise zone legislation. Tribes also have the option to explore jointly-sponsored enterprise zones with their State or other local governments.

According to a comprehensive 1981 report entitled "The Applicability of Enterprise Zones to American Indian Reservations," certain principal factors are important to industry in determining where to locate. Copies of this study may be obtained by writing to the Administration for Native Americans, 330 Independence Avenue, SW., Room 5309, North Building, Washington, DC 20201 Attention: Sharon McCully.

**Additional Requirements for Section I:** In order to successfully compete under Section I of this priority area, the application should:

—Fully describe the basic economic factors involved in the demonstration (location, labor availability and skills, land, resource availability, market demand and availability of private capital).

—Address the degree of civil order within the reservation (personal safety, property security, enforcement of contracts and political stability);

—Describe the impact of the reservation's applicable taxes and regulations (Federal, State, Tribal and local);

—Describe the reservation's infrastructure/service delivery (transportation access, utilities, site preparation, fire protection, schools and street maintenance); and,

—Describe assistance programs that are available or that will be developed (job training, management assistance services, and grants and low-interest loans).

—Include a letter of commitment if the Tribe proposes to engage in a jointly sponsored enterprise zone with another governmental entity. Letters of commitment must clearly state the amount of financial or in-kind contribution to be made.

## Section II

For an enterprise zone concept to work effectively for an urban Indian community, that population should be concentrated in a specific area of the city. An urban Indian organization must use the enterprise zone to address the Indian unemployment problem by: (1) Bringing the job opportunities to the community, and (2) assuring strong affirmative action programs geared to employing Indian people in the businesses attracted to the zone.

It must be remembered that "Indian preference" in hiring, although legally



practiced in certain Federal agencies and by Tribes on Indian reservations, is generally looked upon as against equal opportunity laws when applied outside the reservations and in specific Federal agencies. Therefore, an enterprise zone created to address unemployment problems among an urban Indian community cannot discriminate against non-Indians seeking employment inside their zone.

**Additional Requirements for Section II:** In order to successfully compete under Section II of this priority area, the application should:

—Consider creating a special board to handle the enterprise zone program in order to ensure that there is no intra-community factionalism and no political interference between business conducted with the private sector and municipal governments.

—Describe how it plans to utilize Federal, State, local and Native American resources and programs which are currently available. These include but are not limited to:

(1) Targeted assistance programs such as: SCORE, JPTA, ACE; bond issuance for manufacturing facilities and equipment; tax and regulatory relief incentives, and improved municipal services (trash removal, security, etc.);

(2) Local and regional private sector resources (i.e., financial contributions for venture capital fund, technical and management assistance, other creative corporate philanthropy);

(3) Federal Government assistance programs, such as: BIA, SBA, EDA and other programs available for technical and financial assistance, minority preference in securing contracts; and

(4) Resources available through the urban Indian organization such as employment and training programs, employee counseling and support programs, and creation of venture capital fund (i.e. UIDA's BIDCO fund, the Dakota Fund, etc.).

—Include a letter of commitment from their municipal and State governments if they are from urban Indian centers. Letters of commitment must clearly state the amount of financial or in-kind contribution to be made.

Applicants are encouraged to contact Sharon McCully, (202) 245-7776, for information concerning specific programmatic issues in this priority area.

### *2.3 Resolving Alcohol and Substance Abuse within Native American Communities*

**Eligibility Criteria:** American Indian Tribes, Alaska Native villages, Hawaiian groups and other Native American organizations.

**Purpose:** To address the reduction or prevention of alcohol and substance abuse through innovative prevention projects. Demonstrations should show positive measurable outcomes in preventing or reducing alcohol and substance abuse. ANA hopes that projects will build on traditional Indian values and practices.

**Duration of projects:** Not to exceed 3 years.

**Federal Share of Project Costs:** Not to exceed \$160,000 per project for the total 3-year project period.

**Minimum Requirements for Project Design:** In order to successfully compete under this priority area, the application should:

—To the extent possible, present a comprehensive prevention approach involving the family and the entire community. Or applicants may focus on a particular segment within the family or community, such as the workplace or school.

—State how the application relates to or could relate to their Tribal Action Plan (TAP) if applicant is an Indian Tribe or Alaska Native village. The application, however, cannot duplicate an existing funded element of the TAP or propose to develop or coordinate the TAP.

—Describe cooperative efforts including general public and private agencies and/or organizations

—To the extent possible, have a cultural approach focusing on traditional Native American practices.

—Include a budget for each year for which Federal funding is requested.

—Not provide for on-going social service delivery, expansion or continuation of existing social service delivery programs, or direct services.

**Background Information:** Widespread problems associated with alcohol and substance abuse among the Native American population have been documented by various studies/reports through the Indian Health Service and the Bureau of Indian Affairs. The costs of alcohol and substance abuse measured in terms of physical, mental, social and economic indices have been enormous to Native Americans.

Historically, the health status of Native Americans has been substantially below that of the U.S. population especially in terms of alcohol and alcohol-related health problems. Indians die from alcoholism at over four times the age-adjusted rates for the U.S. population. Misuse of alcohol and substance abuse result in a rate of years of potential life lost nearly five times that of the general U.S. population. Four of the top ten causes of death among Indians are alcohol and drug related

injuries (18 percent of all deaths), chronic liver disease and cirrhosis (5 percent), suicide (3 percent), and homicide (3 percent).

Alcohol and substance abuse is especially hazardous to Indian youth. Indians between the ages of 15 and 24 are more than two times as likely to commit suicide as the general population and approximately 80 percent of those suicides are alcohol-related. Indians between the ages of 15 and 24 are twice as likely as the general population to die in automobile accidents, 75 percent of which are alcohol-related.

Alcohol abuse affects and is associated with not only the abuser, but also the abuser's family. In most Native American communities family is defined as the extended family—parents, their children, grandparents, aunts, uncles, etc. It also affects and is associated with the abuser's friends and peers, therefore impacting on the condition of the workplace and the school environment. Therefore a comprehensive approach is needed. Community support through public awareness as one means might prove useful in the problem solving process.

Another useful factor is incorporating traditionally held Indian values in reducing the use of alcohol and other substances. A 1980 study by E.R. Oetting, et al., found that Native American youth who did not use drugs or alcohol consistently came from homes that had strong family sanctions against substance abuse. These families were perceived as being more successful in the "Indian way." A 1985 study of 2,000 Native American youth ages 11 to 18, conducted by Velma Mason, showed that youth who did not use drugs or alcohol exhibited a high degree of family-oriented identity and perceived their families as maintaining traditional values. The reverse was found for Indian youth who reported drug or alcohol involvement.

HDS funded 5 prevention projects in FY 1987 and 4 in 1988 under this same priority area. Applicants are encouraged to contact Sharon McCully, (202) 245-7776, for information concerning specific programmatic issues in this priority area.

### **III. Administrative on Developmental Disabilities**

On April 21, 1988, a notice soliciting comments on ADD's proposed priority areas for Fiscal Year 1989 Projects of National Significance was published in the *Federal Register*. A 60-day period was required to allow the public to comment on the proposed areas. After



review and analysis of these comments, ADD published its final priorities.

ADD received 31 letters and a total of 44 specific comments from national and local human service organizations, advocacy groups, educators, representatives from State and local government offices, and private citizens. The comments received were helpful in highlighting the concerns of the developmental disabilities field and have been extensively used in refining the final priority areas.

The comments received were also the basis for excluding the following priority areas from the final solicitation: Personnel Shortages, Integrated Child Development and Educational Environment, and Substance Abuse.

The Ongoing Data Collection System Priority Area was included in the Fiscal Year 1988 Projects of National Significance announcement. A grantee has been selected and is scheduled for two year funding. This priority area, therefore, is not included in this announcement.

### 3.1 Early Intervention

**Eligibility Criteria:** State, public or private nonprofit organizations, institutions or agencies.

**Purpose:** To develop tools and procedures to enable the analysis and assessment of the adequacy of existing State policies and practices on early intervention; and to develop models of interdisciplinary training and multi-organizational involvement (Head Start, University Affiliated Programs, and Maternal and Child Health centers) needed to ensure measurable progress in ameliorating the effects of developmental disabilities through early intervention.

This information is needed by policymakers who may make decisions on critical issues pertaining to early intervention. Policymakers include individuals in decision-making positions in business, local/State government, associations, and community organizations.

**Duration of Projects:** Not to exceed 12 months.

**Federal Share of Project Costs:** Not to exceed \$100,000 per project.

**Minimum Requirements for Project Design:** In order to successfully compete under this priority area, the application should:

—*For Postnatal*—explore and document the effect of neonatal and postnatal prevention opportunities on reducing the incidence of developmental disabilities. Within this area, the following themes may be selected for study:

(1) Projects which will provide screening for early identification and referral of newborns and infants who are at-risk due to biological or environmental factors. Such risks can contribute to unfulfilled parental responsibilities which may increase the incidence of developmental disabilities; and

(2) Projects designed to reduce and prevent child abuse and neglect which contributes to the incidence of developmental disabilities.

—*For Education/Public Awareness*—provide education and information for public and professional audiences regarding available early intervention activities related to genetic, environmental, and other factors related to the well-being of individuals with developmental disabilities. Such activities may include the use of maternal transport of Neonatal Intensive Care Units, the value of early intervention, the use of teratogen registries, and the role of community nursing.

**Background Information:** Developmental disabilities are chronic life long conditions which cause significant functional impairment in several areas of life activity. Developmental disabilities can have great impact upon the lives of many individuals and families. The tragedy of developmental disabilities is that a highly significant percentage of these impairments are caused by factors which are preventable through early intervention.

HDS encourages collaboration among agencies at the State and local level in this priority area.

### 3.2 Family Support Practices

**Eligibility Criteria:** State, public or private nonprofit organizations, institutions or agencies.

**Purpose:** To assist policymakers to resolve specific barriers to the delivery of home-based care, such as third party insurance payments, home-health care practices, funding mechanisms, and other relevant barriers without disrupting the important involvement or informal, natural sources of family support; and to promote cost effectiveness and quality in the provision of family support service and activities. Policymakers include individuals in decision-making positions in business, local/State government, associations, and community organizations.

**Duration of Projects:** Not to exceed 12 months.

**Federal Share of Project Costs:** Not to exceed \$100,000 per project.

**Minimum Requirements for Project Design:** In order to successfully compete under this priority area, the application should:

—Contain a specific focus on the resolution of barriers to home-based care in insurance practices and home-health care standards.

—Outline an effective process for evaluating and synthesizing the available information on this issue.

—Include as an outcome the development of a guide which can be used by policymakers and program developers to select successful models or components of models which would be appropriate for replication within their jurisdictions.

—Provide evidence of collaboration with human service and/or private sector organizations.

**Background Information:** The projects cited below are among numerous efforts at the local, State and national level which have focused on the family support issue. Following are examples of projects which ADD has funded in the past several years:

- "PRO Family Support Project", New Mexico Parents Reaching Out (PRO), in 1986-1988.

- "Community-Based Respite Care Project for Families Providing Care to Developmentally Disabled Children at Home," Maine Department of Mental Health and Mental Retardation, in 1985-1988.

- "Life Service Plans for the Elderly and the Developmentally Disabled—National and Local Self-Help Models," American Bar Association, in 1985-1987.

Additional information about these projects may be obtained by contacting Ray Sanchez, ADD, at (202) 2456-1961.

### 3.3 Technical Assistance Projects to Assist State Planning Councils, University Affiliated Programs (UAP), and the State Protection and Advocacy System (P&A)

**Eligibility Criteria:** State, public or private nonprofit organizations, institutions or agencies.

**Purpose:** To expand or improve:

- The advocacy functions of the State Planning Council;

- The functions performed by University Affiliated Programs and Satellite Centers; and

- The protection and advocacy services relating to the State protection and advocacy system.

This includes arranging for and coordinating the provision of technical assistance to UAPs, PAs and State Developmental Disabilities Planning Councils on program development, planning and policy analysis across



developmental disabilities agencies and programs.

ADD expects to fund one project in each of the categories identified above.

Duration of Projects: Not to exceed 12 months.

Federal Share of Project Costs: Not to exceed \$100,000 per project.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Demonstrate the ability to expand or otherwise improve either the advocacy functions of the State Planning Council; or the functions performed by UAPs and Satellite Centers; or the protection and advocacy services relating to the State P&A system.

- Provide evidence of partnerships with community agencies and local advocacy agencies to emphasize productivity, independence, and integration into the community of individuals with developmental disabilities.

Background Information: Section 162(a)(2) of the Developmental Disabilities and Bill of Rights Act of 1987 provides that the Secretary may make grants and enter into contracts with public or nonprofit private agencies for technical assistance or demonstration projects which hold the promise to expand or improve State Planning Councils, UAPs, and State P&As.

### 3.4 Community Integration

Eligibility Criteria: State, public or private nonprofit organizations, institutions or agencies.

Purpose: To identify, evaluate and synthesize community-based models of successful social integration which have brought about the acceptance of persons with developmental disabilities as neighbors and friends; and to identify models which were successful with other target populations that could be adapted for use with persons with developmental disabilities.

Duration of Projects: Not to exceed 12 months.

Federal Share of Project Costs: Not to exceed \$100,000 per project.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Indicate how the project would build upon or depart from current state-of-the-art practices.

- Contain an evaluation plan focusing on the project products, including a plan of dissemination and utilization of project findings.

Background Information: Further development, enhancement and dissemination of successful models of

community integration are needed to support persons with developmental disabilities so they can live and be accepted in the neighborhoods in which they live.

HDS is particularly interested in examining successful models serving other target populations which can be replicated to serve the developmentally disabled. These models could include: community residential programs, programs supporting employment within the community and other generic social integration programs, such as senior nutrition/multi-service centers.

### Administration for Children, Youth and Families

#### 4.1 Adoptive Parent Groups—Partners in the Adoption of Special Needs Children

Eligibility Criteria: Eligibility is limited to voluntary or public social service agencies, adoption exchanges or other national, regional or Statewide adoption related organizations.

Purpose: To continue support for the development of new or involvement of existing adoptive parent groups and to utilize them in the adoption process for children with special needs.

Duration of Projects: Not to exceed 17 months.

Federal Share of Project Costs: Not to exceed \$75,000 per project.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Establish that the organization has Statewide, regional (i.e., inter-state) or national membership to assist local or State adoptive parent groups to work with child welfare agencies. These adoptive parent groups will be responsible for activities which may include, but are not limited to: Adoptive information and referral services, recruitment and orientation for prospective adoptive parents, and support to families following placement and legalization. Of particular interest will be their ability to support and develop minority adoptive family groups.

- Include the rationale for choosing to work with existing adoptive parent groups, or developing new adoptive parent groups, which will focus on problems or issues of importance to special needs adoption.

- Establish procedures and criteria for the award of subgrants to incorporated nonprofit local or State adoptive parent groups, and for working with newly formed groups, to assist them in incorporating. Subgrants may be

awarded to groups only once they are incorporated and may not exceed \$5,000.

Background: Through the years, adoptive parents have continued to promote and support the adoption of children with special needs. They have been effective advocates for children and have challenged the term "unadoptable" by demonstrating that children with special needs can be placed with a family of their own. The 600 adoptive parent organizations are comprised of volunteers and have limited funds to develop their interests on behalf of children with special needs. Support for these groups is important as they historically have been productive and successful in the activities they pursue. They bring to the adoption field the perspective of consumers of services, and, are on the cutting edge between the children to be served and the agencies that serve them. Adoptive parent groups and social service agencies have worked together to assist and provide support to new adoptive families to integrate these special needs children into their families.

#### 4.2 Special Needs Adoption Services and the Mental Health System

Eligibility Criteria: Public adoption and mental health agencies as well as private nonprofit adoption or mental health agencies are encouraged to apply. Consortia of private and public agencies that demonstrate collaborative planning and joint commitment of resources, including personnel, are encouraged. Emphasis should be placed on involvement of existing community mental health facilities.

Purpose: To support collaborative efforts between adoption agencies and community mental health services for the development or expansion of treatment skills and resources for special needs children and families in adoption. These services and resources should address issues that occur prior to adoption, during placement and after legalization.

Duration of Projects: Not to exceed 24 months.

Federal Share of Project Costs: Not to exceed \$125,000 per project per year.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Provide for a process to achieve inter-agency coordination and improved mental health services to the adoption community from a child's preparation for adoption through placement, legalization and post adoption.

- Describe methods to be used for coordinated planning, resource



development and systems intergration that will provide a continuum of home and community based services to assist the child to be adopted, the prospective adoptive family and the adopted child in this family.

—Describe methods to document whether goals and objectives have been met and to assess the effectiveness of the project.

—Provide written assurances from the collaborating agencies of intent to participate in the project.

Background: Children in the child welfare system for whom adoption is the goal and their prospective adoptive families, as well as children now in adoption and their families, often need access to the skills and expertise of mental health services in addition to child welfare services. This is especially true with children who are older and have other special needs are being or have been adopted. Because the professional mental health service provider is often not aware of the special issues related to the adoption experience, special efforts must be made to expand existing treatment skills to fully serve this group.

Types of mental health problems related to adoption are not unique, but these clients exist in a family environment that is different from other mental health clients. For example, the issues of loss, separation and attachment are part of the adoption experience and must be viewed in that context. The development of appropriate services to meet the needs of these children and their families is necessary.

Information on special needs adoption projects can be obtained from: National Resource Center for Special Needs Adoption, Spaulding for Children, 366 Waltrous Road, P.O. Box 337, Chelsea, Michigan 48118, (313) 475-8693.

#### 4.3 Collaboration among Adoption, Mental Health and Developmental Disabilities Service Systems

Eligibility Criteria: Agencies administering any of the three public programs (Child Welfare (CW), Mental Health (MH) or Developmental Disabilities (DD)) at the State, regional or local level with written commitment from the other two agencies can apply.

Purpose: To promote systems change which provide for increasing collaboration among the three programs identified above as related to the adoption of special needs children with developmental disabilities.

Duration of projects: Not to exceed 24 months.

Federal Share of Project Costs: Not to exceed \$75,000 per project per year.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

—Describe the development and institutionalization of a three-way collaborative model on either a State-wide, regional (intra-State) or local basis.

—Provide clear and specific written commitments to the collaborative effort from the two agencies which are not the lead agency.

—Provide for complete development of a collaborative model suitable for dissemination and replication in other locations.

Background: Adoption services have changed dramatically over the past two decades as children with special needs from a variety of settings are considered for and placed with permanent families. Traditionally, all children for adoption were served in the child welfare system, but in the past few years there has been real movement in considering children in mental health and developmental disabilities facilities for permanent family life. For children with developmental disabilities who cannot remain with nor return to their birth parents, regardless of which system (CW, MH, or DD) has responsibility, adoption is a viable option.

Although there are exemplary models of cooperation between CW and MH and CW and DD, there has been very little done in the way of establishing a three-way collaborative model. Even in States with an "umbrella agency," where CW, DD and MH are part of the same State-wide department, there are no established cooperative procedures for children with developmental disabilities in need of adoption. In States with separate departments, there is even greater need to develop such procedures.

Information on special needs adoption projects can be obtained from: National Resource Center for Special Needs Adoption, Spaulding for Children, 366 Waltrous Road, P.O. Box 337, Chelsea, Michigan 48118, (313) 475-8693.

#### Child Welfare Training

Eligibility Criteria: For Traineeships, In-Service Training and Collaboration among Agencies, applicants must be institutions of higher education which are accredited by the Council of Social Work Education and which train bachelors or masters level students in social work. Training must be for candidates for bachelors or masters degrees in social work. For Indian Child Welfare Training, applicants must be two and four year colleges controlled by Tribes or serving reservations and

accredited by the appropriate accrediting authorities. For Historically Black Colleges and Universities (HBCUs), applicants must qualify under Executive Order 12320. Generally institutions qualify as HBCUs, if they were established before 1964 with their principal mission having been and continuing to be the education of Black Americans.

Institutions may apply for traineeship grants and one other type of grant (either collaboration or in-service.) Institutions may not apply for both in-service and collaboration.

Purpose: To ensure the availability of adequately trained and skilled staff for public child welfare services. These priority areas promote effective collaboration between schools of social work and public child welfare agencies, and expand the number of professionally trained and qualified individuals who manage and provide services in the public child welfare system.

Duration of projects: See specific priority area.

Federal Share of Project Costs: See specific priority area.

Background: As the child welfare field is increasingly involved with an older, and more difficult to serve population of children and their families, it is critical that public child welfare staff are adequately trained and skilled. Yet the most recently available data indicate that the vast majority of individuals who are employed in public child welfare lack the professional preparation which would equip them to perform this demanding work.

The social work profession has historically taken a lead role in the professional preparation of child welfare workers. However, as the field and the profession have evolved, fewer graduates of social work programs have taken positions in public agencies and some agencies have either been unable to find qualified persons to fill positions or have declassified positions and hired individuals with no professional credentials. The combination of these and other factors has created a critical problem in child welfare service delivery.

Applications are sought in five priority areas: (4.4.A) traineeships for students pursuing degrees in social work or child welfare; (4.4.B) in-service training for persons employed in the field of child welfare; (4.4.C) special grants for Indians; (4.4.D) special grants for HBCUs; and (4.4.E) demonstration projects which involve collaborative efforts between schools of social work and public child welfare agencies.



Dissemination is not appropriate to these priority areas. Therefore, application narratives should respond to the following sections:

- (a) Need for the Project (20 points/5 pages).
- (b) Project Methodology (30 points/7.5 pages).
- (c) Expected Outcomes (30 points/7.5 pages).
- (d) Level of Effort (20 points/5 pages).

Only these four criteria will be used to evaluate applications under these Child Welfare Training priority areas.

#### 4.4.A. Traineeships

Traineeship grants will provide financial support for the education and professional training of students pursuing undergraduate or graduate social work degrees or graduate degrees in child welfare who have a stated interest in practice in public child welfare after graduation. Traineeships are intended to support the education of professionals who will assume leadership positions in the field of public child welfare. All traineeships must include a field placement component that provides the student with direct experience in a child welfare related setting, preferably in the public sector. HDS is especially interested in applications for traineeships for minority students.

Applicants are encouraged to seek cooperative agreements with public child welfare agencies in order to provide traineeships to public agency employees who demonstrate potential for leadership in child welfare and who wish to return to school to obtain an undergraduate or graduate level degree in social work and have indicated a desire to remain in public child welfare for a period of time at least equal to the period of the traineeship.

Applications should describe the curriculum utilized and how it relates to the needs of child welfare practitioners. Applicants must specify the number of students to receive traineeships.

Traineeships grants may only be used for student financial support and not for any other direct or indirect costs for the applicant institution. Applicants should include the cost of an annual grantees meeting, to be held in Washington, DC, in their budgets.

Traineeship grants will be awarded for up to 24 months, for stipends with a maximum of \$5,000 per student not to exceed a total of \$25,000 per year per institution. No matching funds are required for traineeships. Institutions having current Child Welfare Traineeship grants which will continue beyond September 30, 1989, are not eligible to apply under this priority area.

#### 4.4.B. In-Service Training

In-Service training grants will support training for personnel employed in public/Tribal child welfare agencies. Topics for training should address specific high priority training needs identified by the public/Tribal agency and may focus on any level of personnel, including front line workers, supervisors or administrators. HDS is especially interested in leadership training for persons in management and senior supervisory positions and for other agency employees who demonstrate potential for leadership in the child welfare field and have indicated a desire to remain in public child welfare for a period of time at least equal to the period of in-service training.

The training program should be described in detail and include specific measurable outcomes and a plan for evaluation of effectiveness. Applicants must demonstrate and document that Indian Tribal or State child welfare agencies have actively participated in the selection of training topics and in the planning and implementation of the project. Participating agencies are encouraged to contribute resources toward the completion of the project goals. HDS anticipates funding 17-month training grants having a Federal share not to exceed \$100,000 per grant. Matching funds are required.

#### 4.4.C. Special Grants for Indian Child Welfare Training

Eligibility Criteria: Two and four year colleges controlled by Indian Tribes or serving Indian reservations. Applications from non-Indian colleges which focus on the education and training of American Indians must be submitted under child welfare training priority areas 4.4.A, 4.4.B, or 4.4.E. Institutions having a current child welfare training traineeship grant which will continue beyond September 30, 1989 are not eligible to apply for traineeship grants.

Eligible applicants for this priority area may apply for the following:

##### 1. Traineeships

Traineeship grants will provide financial support for the education and professional training of Indian students pursuing undergraduate or graduate social work degrees who have a stated interest in practice in public child welfare after graduation. All traineeships must include a field placement component that provides the student with direct experience in a child welfare related setting.

Applicants are encouraged to seek cooperative agreements with Tribal and other child welfare agencies in order to provide traineeships to agency employees who demonstrate potential for leadership in child welfare and have indicated a desire to remain in public child welfare for a period of time at least equal to the period of the traineeship. Agreements between two year and four year colleges are encouraged to assist child welfare trainees in two year colleges to enter advanced degree programs.

Applications should describe the curriculum utilized and how it relates to the needs of child welfare practitioners.

Traineeship grants may only be used for student financial support and for limited additional support and advisory services which may be necessary to maintain Indian Students in school, such as remedial assistance, but not for any other direct or indirect costs for the applicant institution. Applicants are asked to include funds for an annual grantee meeting in Washington, DC, as a part of their budget.

Traineeship grants will be awarded for up to 36 months, for a maximum of \$5,000 per student, not to exceed a Federal share of \$25,000 per school, per year. Applicants must specify the number of students to receive traineeships. No matching funds are required for these Traineeships.

##### 2. In-Service Training

In-Service training grants will support training projects from two and four year colleges controlled by Indian Tribes or serving Indian reservations for personnel employed in Tribal child welfare agencies who have indicated a desire to remain in public child welfare for a period of time at least equal to the period of training.

Topics for training should address specific high priority training needs identified by the Tribal agency and may focus on any level of personnel, including front line workers, supervisors or administrators.

The training program should be described in detail including specific measurable outcomes and a plan for evaluation of effectiveness. Applicants must show that Tribal child welfare agencies have actively participated in the selection of training topics and in the planning and implementation of the project. Emphasis should be placed on administrative and practical skills such as interviewing, case management, therapeutic intervention techniques, interagency coordination and networking with other service agencies, liability issues, records maintenance,



community needs assessment and community planning. Participating agencies are encouraged to contribute resources toward the completion of the project goals.

HDS anticipates funding 17-month grants having a Federal share not to exceed \$100,000 per grant. Matching funds are required.

#### 4.4.D. Special Grants for Historical Black Colleges and Universities

Eligibility Criteria: Historically Black Colleges and Universities (HBCU) as defined in Executive Order 12374 which offer baccalaureate and masters degree programs which have been accredited by the Council of Social Work Education. Generally, institutions qualify as HBCUs if they were established before 1964 with their principal mission having been and continuing to be the education of Black Americans. Institutions having a current child welfare traineeship grant which will continue beyond September 30, 1989, are not eligible to apply for traineeship grants.

Eligible applicants for this priority area may apply for the following:

##### 1. Traineeships

Traineeship grants will provide financial support for the education and professional training of students within an HBCU pursuing undergraduate or graduate social work degrees who have a stated interest in practice in public child welfare programs after graduation and have indicated a desire to remain in public child welfare for a period of time at least equal to the period of the traineeship. All traineeships must include a field placement component that provides the student with direct experience in a child welfare services related setting.

Applicants are encouraged to seek cooperative agreements with child welfare agencies in order to provide traineeships to agency employees who demonstrate potential for leadership in child welfare and have indicated a desire to remain in public child welfare for a period of time at least equal to the period of the traineeship.

Applications should describe the curriculum utilized and how it relates to the needs of child welfare practitioners.

Traineeship grants may only be used for student financial support and not for any other direct or indirect costs for the applicant institution, except to pay for one person to travel to grantees meeting in Washington, DC.

Traineeship grants will be awarded for up to 24 months, for a maximum of \$5,000 per student, not to exceed a Federal share of \$25,000 per school, per

year. Applicants must specify the number of students to receive traineeships. No matching funds are required for these traineeships.

##### 2. In-Service Training

In-Service training grants will support training projects for personnel employed in public child welfare agencies. Topics for training should address specific high priority training needs identified by the public agency and may focus on any level of personnel, including front line workers, supervisors or administrators. The training program should be described in detail including specific measurable outcomes and a plan for evaluation of effectiveness. Emphasis should be placed on administrative and practical skills such as interviewing, case management, therapeutic intervention techniques, interagency coordination and networking with other service agencies, liability issues, records maintenance, community needs assessment and community planning.

Applicants must demonstrate and document that public child welfare agencies have actively participated in the selection of the training topics and in the planning and implementation of the project. Participating agencies are encouraged to contribute resources toward the completion of the project goals.

HDS anticipates funding 17-month grants having a Federal share not to exceed \$100,000 per grant. Matching funds are required.

#### 4.4.E. Collaboration Between Schools of Social Work and Child Welfare Agencies

Grants will be awarded in this priority area to support special projects of national significance from institutions of higher education that demonstrate creative, innovative, organizationally sound and economically feasible methods of facilitate continuing interaction between schools of social work and public child welfare agencies in order to promote child welfare training objectives. These collaborative efforts may also include professional associations with significant involvement in public child welfare. The only eligible applicant, however, is the school of social work. HDS encourages formulation of projects which ensure full input and participation of both parties in the collaborative effort; which maximize the role of public child welfare agencies in pursuit of child welfare training objectives; and which ultimately improve the level of child welfare services in the country. Letters of commitment, not support, must be included with the application.

Some examples are:

(a) Demonstration of a model to share or exchange staff and faculty in order to enrich teaching and promote improvement in the quality of agency services;

(b) Efforts to promote the upgrading of State and/or local merit system procedures for classifying professional social work positions;

(c) Efforts to improve the extent to which interdisciplinary services are provided to child welfare clients;

(d) Development of uniform certification standards for child welfare workers;

(e) Definition of competencies for supervisors in child welfare practice, including child protective services; and

(f) Development and implementation of strategies to recruit and train individuals with the characteristics, motivation and ability to become supervisors and administrators in child welfare agencies.

These examples are meant to be illustrative only and HDS encourages the field to generate additional concepts.

Projects which are primarily in-service training or traineeships will not be funded under this priority area. HDS anticipates funding 24-month collaborative grants having a Federal share not to exceed \$100,000 per grant per year. Matching funds are required.

#### 4.5 Liability and Legal Issues in Child Welfare and Child Abuse

Eligibility Criteria: Organizations with a national perspective and knowledge of the liability and legal issues affecting child welfare and child protection programs are encouraged to apply.

Purpose: To support the conduct of a symposium on liability and legal issues affecting child welfare and child protective services programs designed to inform the field about current trends in law suits and judicial findings; and to prepare a report on the symposium which describes both the nature of the trends and risks to agencies and workers and proposes the types of procedures and processes that represent not only best practice, but also the most effective ways to defend agency decisions and practices in judicial proceedings.

Duration of Project: Not to exceed 12 months.

Federal Share of Project Costs: Not to exceed \$75,000.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

—Indicate an understanding of the types of liability and legal issues



affecting child welfare and child protection services programs, both directly and through laws and precedents established in related fields, and of their impact upon the functioning and practices of child welfare and child protection services agencies.

—Refer to relevant publications and articles related to liability and legal issues in the field.

—Describe how the symposium would be structured, including duration, estimated number of participants, proposed location, proposed date(s), whether the symposium will be held in conjunction with a national meeting related to child welfare and child protection, etc.

—Describe the types of participants who would be involved (e.g., attorneys, judges, child welfare and child abuse professionals and administrators, academicians) and their roles in the preparation and conduct of the symposium.

—Outline the type of report that would be developed following the symposium.

**Background Information:** In the past few years numerous law suits have challenged the traditional sovereign immunity of public agencies with respect to liability, wrongful death and the like. Suits against law enforcement agencies have left many with judgments for damages due to actions of its officers. Suits against caseworkers in the child welfare and child protection agencies have also been taken to court. Suits may be brought for not removing a child who should have been, for removing a child who should not have been, or for doing nothing. Liability insurance costs for social service agencies have caused some localities to resort to self-insurance. All of these issues can have an impact on the behavior of social service personnel, on the ability to recruit professionals, on the costs of liability and malpractice insurance and on the quality control and decision making structures of public agencies.

#### *4.6 Collaborative Effort to Establish Development Child Care for Children in Homeless Families*

**Eligibility Criteria:** Head Start grantees, child protective services agencies, public or nonprofit child care agencies, and other community service agencies

**Purpose:** To develop and provide developmental child care to homeless children from age one through the age for mandatory entry into public school who are residing with their families in welfare hotels, homeless shelters, or other temporary shelters for homeless

families. These children have very limited opportunity for developmental experiences due to the environmental and social restrictions inherent in these living arrangements. The lead coordinating agency must be able to coordinate the agencies so that a package of full day developmental child care services is available for all children in the family below mandatory school age regardless of the number, ages or special needs. The full day services are necessary not only to provide the physical and social space for optimum development, but also to provide parents with respite time to seek or train for employment and attend to other personal needs. Projects funded under this priority area can help to find ways to ensure the availability of a wide range of services for these homeless children.

**Duration of Projects:** Not to exceed 24 months.

**Federal Share of Project Costs:** Not to exceed \$100,000 per project per year.

**Minimum Requirements for Project Design:** In order to successfully compete under this priority area, the application should:

—Provide for a collaborative arrangement which includes the public agency responsible for the families, the child protective services agency, Head Start, a Parent and Child Center (PCC) or a developmental child care program for special needs children, as appropriate, to establish a full day program with parental involvement to meet the physical, social, emotional and educational development needs of these children. Letters of commitment, not of support, must be included.

—Describe how the child care programs will enhance the child's development.

—Provide for adequate liaison through the homeless program to continue work with children when/if the family is moved from shelter to shelter. The provision of follow-up services, when they leave the shelter for a permanent home (especially in the identification of other child development arrangements for preschool children) must be addressed in the application.

—Explain how maximum use will be made of existing community services, utilizing community donated services, such as volunteers for transportation or working with children, etc. All involved groups must provide a letter of commitment.

—Provide for an evaluation component which will clearly assess the effectiveness of the developmental child care project.

**Background:** The effects of poverty on children's development is well

documented. The lack of a permanent home, the restricted environment of alternative shelters and the inability to count on the stability of services in the same community add additional stress. Because of the inherent mobility in the situation, these children and families often "fall through the cracks" for services that benefit low-income families with a permanent address.

#### *4.7 Adaptation of Early Childhood State-of-the-Art Methods, Models and Curricula in a Head Start Setting*

**Eligibility Criteria:** Institutions of higher education, research and training organizations or other organizations which have existing program models, materials or curricula ready for demonstration in Head Start in one of the following areas:

(1) Curricula including materials, in areas such as science or math or a developmental area such as problem solving or logical thinking;

(2) Materials, models or methods for parent/child interaction or family dynamics;

(3) Materials, models or methods to assist staff in assessing preschool children;

(4) Materials, methods or demonstrations focusing on leadership development or training for preschool staff; or

(5) New models or materials for child or program assessment.

These models, methods or materials shall either be new to Head Start or have had limited prior use in Head Start programs.

**Purpose:** To provide the field of child development with new ideas and methods for enhancing child, parent and staff development, and for keeping Head Start grantees current with new ideas, methods and technology in the field of child development and early childhood education.

**Duration of Project:** Not to exceed 24 months.

**Federal Share of Project Costs:** Not to exceed \$150,000 per year per project.

**Minimum Requirements for Project Design:** In order to successfully compete under this priority area, the application should:

—Include signed consent from one or more Head Start programs in which the applicant can mount the demonstration.

—Include a strong justification if the entire demonstration will not be carried out at Head Start site(s).

—Provide a justification for how their project would improve the portion of the Head Start program on which it is targeted, how it will benefit Head Start children, parents and staff, and how it



will contribute to the child development field.

—Include in the methodology sufficient specificity on the numbers of classrooms, children, parents, or staff participating so that judgments can be made about the potential to generalize the applicability of the models, materials or technologies to other child development settings.

Background: With the growing interest in the provision of preschool experiences for all children and especially low-income children, Head Start's role as a model child development program becomes increasingly important. Therefore, as new knowledge, technologies and theories develop and are accepted by professionals in early childhood development, their introduction into Head Start is important to the field as well as to the maintenance of Head Start's role as a leader and model in the field of child development. It is also critical in providing Head Start children and their families with the best services possible based on state-of-the-art thinking and technologies.

For the past several years Head Start has been funding innovative ideas which have been generated by Head Start programs, a grass roots approach. This was done in order to infuse Head Start with new programmatic possibilities and options. While this effort has generated a number of stimulating innovations, it has precluded the infusion of new innovations from the child development field at-large and particularly those institutions engaged in state-of-the-art child development research.

During the final year of the project, each project may be evaluated to determine the general applicability of the model, material or technology. Those projects which seem to have potential for general applicability may be supplemented to test its transferability during a third year.

#### 4.8 Development and Testing of Integrated Treatment for Dysfunctional Families of At-Risk Youth by Runaway and Homeless Youth Centers

Eligibility Criteria: Applicants must be runaway and homeless youth shelters that are currently funded under the Runaway and Homeless Youth Act or would qualify under the Act's program requirements.

Purpose: To develop and test model programs of treatment for dysfunctional families that enable the family to remain as the primary care giver and still protect the interests and well being of at-risk youth.

Duration of Projects: Not to exceed 36 months.

Federal Share of Project Costs: Not to exceed \$100,000 per project per year.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

—Emphasize development of integrated services program design which supports families in their role as primary caregiver. The applicant must demonstrate the ability to put into place a treatment program that covers three major service components:

- In-home treatment—intensive intervention;
- Treatment services while the youth is out of the home; and
- Outpatient services that are accessible.

—Have all three service capabilities or have agreement(s) with appropriate service providers to provide missing components(s). Documentation of the agreement(s) should be included with the application.

—Provide for a third party evaluation of the impacts of the treatment components. The evaluation design should include some common measures to provide pre- and post-treatment assessments of family dysfunction. The specific common measures to be used in the evaluation will be agreed upon at a project briefing at the outset of the project period.

Background Information: One of the major causes of runaway behavior and homelessness among youth is dysfunctional family situations. Family treatment programs can be successful to the extent of helping families remain the primary care giver of their children. While integrated treatment may not dispel deeply rooted dysfunction, it can assist in developing a level of maintenance that permits the family to remain as the primary care giver for the youth. Successful programs, however, need to be integrated in their efforts. HDS is interested in the development of model integrated treatment programs for use by runaway and homeless youth shelters in working with at-risk youth and their families.

#### 4.9 Transitioning Homeless Youth from Emergency Homeless Center to Independent Living Programs and Self-Sufficiency

Eligibility Criteria: Partnership projects between Federally-funded Community Action Agencies and Runaway and Homeless Youth Center. Applications that do not include partnership arrangements with Runaway and Homeless Youth Centers are ineligible and will not be reviewed.

Letters of commitment, not support, for the partner agency which is not the lead agency should be included with the application.

Purpose: To stimulate self-sufficiency by developing and testing new models for working with homeless, older, at-risk adolescents which: (1) Integrate emergency services and (2) coordinate social service efforts that improve independent living and self-sufficiency skills.

Duration of projects: Not to exceed 36 months.

Federal Share of Project Costs: Not to exceed \$60,000 per project per year.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

—Identify Federal, State and local impediments to the development and implementation of independent living/self-sufficiency models and describe the process to be used to overcome them in developing a comprehensive community wide planning process that will become institutionalized.

—Build on the knowledge gained from ACYF funded demonstrations and recent studies. Information on such studies is available through the National Resources Center for Youth Services, operated by the University of Oklahoma, 131 North Greenwood Avenue, Tulsa, Oklahoma 74120.

—Include an evaluation component which must be conducted by an independent evaluator.

Background Information: The challenge to applicants for funds under this priority area is to develop and test new models that deal with the range of problems encountered by homeless adolescents receiving emergency shelter services when they attempt to live independently. One problem to overcome is the lack of a comprehensive support system covering the full period of time needed by adolescents to develop the skills necessary to achieve self-sufficiency. Most often, existing systems are not part of an integrated network that combines emergency services for the homeless and longer range planning for independent living and self-sufficiency. Whatever specific problem or combination of problems the applicant chooses to address, the applicant will be expected to propose solutions that eliminate the "networking of services" problems which cause youth to remain in emergency service or temporary placement situations for protracted periods of time.



### Part III—General Information and Guidelines for the Application Process and Review

This part contains general information for potential applicants and basic guidelines for submitting applications in response to this announcement.

Application forms are provided along with detailed instructions for developing and assembling the application package for submittal. Specific guidelines on applicant eligibility and grantee matching requirements are provided in Part II under each priority area.

#### A. General Information

##### 1. Review Process and Funding Decisions

Applications that conform to the requirements of this program announcement will be reviewed and scored competitively against the published evaluation criteria by experts in the field, generally persons from outside of the Federal Government. The results of this review are a primary factor in making funding decisions.

HDS reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant. HDS also solicits comments from other Federal Departments, from Central and Regional Office staff, from interested foundations, national organizations, specialists, experts, States and the general public. These comments will be considered by the Assistant Secretary for Human Development Services and the HDS Senior Staff in making funding decisions.

Preference may be given to applications which focus on or feature: Minority populations; a substantial innovation that has the potential to improve theory or practice in the field of human services; a model practice or set of procedures that hold the potential for dissemination to, and utilization by, organizations involved in the administration or delivery of human services; substantial involvement of volunteers; substantial involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and non-Federal funds available for the proposed project; the possibility of a large degree of benefit for a small Federal investment; a programmatic focus on those most in need; and substantial involvement in the proposed project by national or community foundations.

To the extent possible, final decisions will reflect the equitable distribution of assistance among the States,

geographical areas of the nation, rural and urban areas, and ethnic populations. HDS Senior Staff also take into account the need to avoid wasteful duplication of effort in making funding decisions.

##### 2. Required Notification of State Single Point of Contact

It is imperative that the applicant submit all required materials to the Single Point of Contact (SPOC) and indicate the date of this submittal (or date of contact if no submittal is required) on the SF 424, item 22a. SPOCs will be notified of any applicant not indicating SPOC contact on the application, when SPOC contact is required. SPOCs have sixty (60) days starting from the application deadline to comment on applications for financial assistance under this program. Comments are, therefore, due no later than January 10, 1989. This process is required when the program is covered under Executive Order 12372

"Intergovernmental Review of Federal Programs" and 45 CFR Part 100 "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories, except Alaska, Idaho, Kansas, Minnesota, Nebraska, American Samoa and Palau, have elected to participate in the Executive Order process and have established SPOCs. Applicants from these seven areas need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule. It is helpful in tracking SPOC comments if the SPOC will clearly indicate the applicant organization as it appears on the application SF 424. When comments are submitted directly to HDS, they should be addressed to the application mailing address in Part I.

A list of the State Single Points of Contact is included at the end of this announcement.

##### 3. Notification of State Developmental Disabilities Councils

A copy of the application must be submitted to the State Developmental Disabilities Council for its review and comment when individuals with developmental disabilities who reside in that State are included among the target populations of the proposed project. A listing of the Councils may be obtained by calling (202) 755-4560. This requirement is in addition to the SPOC notification required by Executive Order 12372.

##### B. Deadline for Submittal of Applications

The closing date for submittal of applications under this program announcement is November 10, 1988. Applications must be either mailed or hand-delivered to the address in Part I of this announcement.

Hand-delivered applications are accepted during the normal working hours of 9:00 a.m. to 5:30 p.m., Monday through Friday. An application will be considered as meeting the deadline if it is either:

1. Received at the mailing address on or before the deadline date; or
2. Postmarked before midnight of the deadline date and received in time to be considered during the competitive review process. Applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier or from the U.S. Postal Service as proof of mailing by the deadline date. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the above deadline are considered late applications. HDS will notify each late applicant that its application will not be considered in the current competition.

HDS may extend the deadline for all applicants because of acts of God, such as floods, hurricanes or earthquakes, when there is widespread disruption of the mail or when HDS determines an extension to be in the best interest of the government. However, if HDS does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant(s).

##### C. Application Screening Requirements

Applications that meet the deadline for submittal will be screened to determine completeness and conformity to the requirements of this program announcement. Complete, conforming applications will be reviewed and scored competitively against the



evaluation criteria. In order for an application to be complete and in conformance, it must meet the following screening requirements:

(1) Priority Area Eligibility

The application must meet any eligibility requirements specific to the priority area under which it is being submitted. This includes eligibility of the organization, duration of project, maximum Federal funding to be requested and matching or cost sharing requirements. An application can be submitted under only one priority area.

(2) Priority Area Responsiveness

The application must be responsive to the priority area under which it is being submitted as identified at the top of page one of the SF 424. In order to be considered responsive, the application must address each of the minimum requirements for an application specified in the priority area description.

(3) Application Form

The application must be submitted on single-sided reproduced copies of the SF 424: page 1, Application Cover Sheet; Part II, Project Approval Information; and Part III, Budget Information.

(4) Copies Required

Applicant must submit an original and two copies of the complete application, prepared according to the instructions provided. A complete application includes: the form identified in (3) above, a summary description of the proposed project, and the program narrative.

(5) Signature

The signature of the Certifying Representative must be handwritten (preferably in blue ink) and the signer's name and title must be typed in Item 23 of the original SF 424.

(6) Length

All narrative sections of the application must meet format specifications and minimum and maximum length requirements as specified in the instructions later in this Part. Appendices/attachments must not exceed 10 pages.

(7) State Single Point of Contact

Item 22a or 22b must be completed for State Single Point of Contact (SPOC) certification as required under Executive Order 12372.

Applications which do not meet these screening requirements will not be reviewed and the applicant will be so informed.

*D. Evaluation Criteria*

These evaluation criteria correspond to the outline for the Part IV narrative section of the application and the descriptions of the five criteria below should be used as headings in developing the program narrative.

Applications which pass the screening will be reviewed by a panel of at least three individuals. These reviewers will be primarily experts from outside the Federal government. Reviewers will comment on and score the applications, basing their comments and scoring decisions on the criteria below.

(a) Need for the Project (Objectives) 20 points

State the specific objectives and needs addressed by the project in terms of its national or regional significance, its theoretical importance and its applicability to practices and subordinate objectives of the project. Provide a detailed discussion of the "state-of-the-art" relative to the problem or area addressed by the proposal and indicate how the proposed effort will impact on it. For research projects, state the hypothesis(es) to be tested or the specific questions to be answered. For demonstration, training, technical assistance, and evaluation projects, state the goals or service objectives of the proposal. Provide supporting documentation or other testimonies from concerned interests other than the applicant. Summarize, evaluate and relate relevant data, based on planning or demonstration studies, to the proposed project.

Give a precise location of the project or area to be served by the proposed project.

(b) Project Methodology (Project Implementation Plan): 30 points

*Tasks to be performed.* Describe in detail the tasks to be performed including the events, activities and expected products. Identify the key staff member who will be the lead person. Relate each task to each of the objectives. Provide a chart indicating the timetable for completing each task, the lead person and the time committed.

*Approach.* Explain, in detail, the approach to be used for accomplishing each task and how this approach will accomplish the project objectives as well as how these objectives will solve the problem(s). Also, fully describe the research methodology, demonstration plan, design of training program or other appropriate techniques to be used.

(c) Excepted Outcomes: 15 points

Identify, in specific terms, the results and benefits—for target groups and

human service programs—to be derived from implementing the proposed project. Describe how the expected results and benefits will relate to previous research and/or demonstration efforts. Also describe in specific terms the anticipated contribution that this project will make to policy, practice, theory and/or future research.

Describe in detail evaluation plans and procedures which are capable of measuring the degree to which the project objectives have been accomplished. Provide an explanation on why these evaluation techniques will be used.

(d) Dissemination and Utilization: 15 points

Describe in detail the product(s) resulting from the proposed project that will be disseminated. Also describe the steps to be taken to disseminate and promote the utilization of these products and findings. State what resources will be used to disseminate these projects and findings. Finally, explain why these steps are expected to be successful in disseminating the products and findings. The specific audiences to whom the products and findings will be disseminated must be specified as well as the reason why these audiences will benefit from these results. State in detail the steps to be taken to have the products and findings adopted by these audiences.

(e) Level of Effort: 20 points

*Staffing Pattern.* Describe the staffing pattern for the proposed project, clearly linking responsibilities to project tasks and specifying the contributions to be made by key staff.

*Competence of Staff.* Describe the qualifications of the project team including any experiences working on similar projects. Also describe the variety of skills to be used, relevant research experience, educational background and the demonstrated ability to produce final results that are readily comprehensible and usable. One or two pertinent paragraphs on each key staff member are preferred to vitae/resumes. However, vitae/resumes may be included in the ten pages allowed for attachments/appendices.

*Adequacy of Resources.* Specify the adequacy of the available facilities, resources and organizational experience with regard to the tasks of the proposed project.

List the financial, physical and other resources to be provided by other profit and nonprofit organizations. Explain how these organizations will participate in the day to day operations of the



project. Also explain the available resources or commitments for the continuation of the project after the federal funding period terminates or the demonstration is concluded.

**Budget.** Relate the proposed budget to the level of effort required to attain project objectives and provide a cost/benefit analysis. Demonstrate that the project's costs are reasonable in view of the anticipated results.

**Collaborative Efforts.** Discuss in detail and provide documentation for any collaborative and coordinated efforts with other agencies or organizations. Identify these agencies or organizations and explain how these will enhance the project. Letters of commitment must be included with the application. Also explain in detail the coordination efforts to bring community agencies to work together in support of the proposed project.

**Authorship.** The authors of the application must be clearly identified together with their current relationship to the applicant organization and any future project role they may have if the application is funded.

#### E. The Components of an Application

A complete application consists of the following in this order:

1. Application Cover Sheet, SF 424, page 1;
2. Part II, Project Approval Information;
3. Part III, Budget Information: Section A (Budget Summary), Section B (Budget Categories), and Section E (Budget Estimates of Federal Funds Needed for Balance of the Project);
4. Budget justification not to exceed three pages;
5. Project summary description with listing of key words;
6. Part IV, Program Narrative, organized with sections addressing the following five areas: (a) Need for the project, (b) project methodology, (c) expected outcomes, (d) dissemination and utilization, and (e) level of effort;
7. An Organizational Capability statement;
8. Part V, Assurances; Standard Form 441, Civil Rights Assurance; HHS 641, Rehabilitation Act Assurance; and HHS 596, Human Subjects Certification; and
9. Appendices/attachments not to exceed 10 pages.

#### F. Preparing the Application

The SF 424 has been reprinted for your convenience in preparing the application. Single-sided copies of all required forms must be used for submitting your application. You must reproduce single-sided copies from the reprinted form and type your application

on the copies. Please do not use forms directly from the Federal Register announcement as they are printed on both sides of the page.

To assist applicants in correctly completing the SF 424, included in this announcement are samples of page 1 and the budget section (Part III) of the SF 424 which have been completed. These samples are to be used as a guide only. Please submit your application on the blank copies.

When specific information is not required under this program, N/A (not applicable) has been preprinted on the form. These items are not to be completed. Prepare your application in accordance with the following instructions:

#### 1. SF 424 Page 1, Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation for each item is included. Complete only the items specified.

**Top of Page.** Enter the single priority area number under which the application is being submitted.

**Item 1.** Preprinted on the form.

**Item 2a.** Applicant's application identifier number, if desired.

**Item 2b.** Date application is signed.

**Item 3a.** Enter the number assigned, if any, by the State Single Point of Contact (SPOC). Applications submitted to HDS must contain this identifier, if provided by the SPOC prior to application submittal. Item 22 of this form must also be completed for programs covered by E.O. 12372.

**Item 3b.** Date identifier is assigned by SPOC.

**Item 4a.** Enter the legal name of applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application. Use abbreviations to limit the organization name to 30 characters, including spaces and punctuation.

**Item 4b.** Enter the name of the primary organizational unit which will actually carry out the project activity. If 4a and 4b are the same, leave 4b blank. Use abbreviations to limit this line to 30 characters, including spaces and punctuation.

**Items 4c-4g.** Enter the complete address that the organization actually uses to receive mail, as this is where all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

**Item 4h.** Enter the name and telephone number of a person who can respond to questions about the application. This

person should be accessible at the address given in 4c-4g. All correspondence will be sent to the attention of this individual.

**Item 5.** Enter the employer identification number of the applicant organization as assigned by the Internal Revenue Service (IRS). If the applicant organization has been assigned a DHHS Entity Number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full Entity Number. If the applicant has other grants with DHHS and has been assigned a Payee Identification Number (PIN), enter the PIN in parenthesis () beside the employer identification number.

**Item 6a.** Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested. If more than one program could be involved in funding the project, check "multiple." A list of CFDA numbers is included at the end of this announcement.

**Item 6b.** Enter the program title from the CFDA. Abbreviate if necessary.

**Item 7.** Enter the project title. The title is generally short but should be no more than 200 characters long, including spaces and punctuation, typed in not more than four lines of 50 characters each.

**Summary Description.** Item 7 above asks for a one-page summary description of the project using Section IV. In place of Section IV, use a separate sheet of 8½ x 11 plain paper to provide this summary description of the project. Clearly mark this separate page with the applicant name as shown in item 4a and the priority area number as shown at the top of the page. The summary description should not exceed 1,200 characters, including spaces and punctuation. These 1,200 characters will become part of the computer data base on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the proposals. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project (such as software packages, materials, management procedures, data collection instruments, training packages or videos). This information in conjunction with the information on the SF 424 becomes the project's "abstract" and will be the major source of information about the proposed project; it is the first information that the reviewers read in evaluating the application.



At the bottom of the page, apart from the summary description, type up to 10 key words describing the service(s) and target population(s) to be covered by the proposed project. The key words are to be selected from the list at the end of Part III of this announcement. These key words will be used for computer searches for specific types of proposed and funded projects.

*Items 8a-8e.* Self-explanatory with the exception of 8e, "City," which includes a town, township, or other municipality.

*Item 9.* Enter the governmental unit where significant and meaningful impact could be observed. List only largest unit or units affected, such as State, county, or city. If entire unit is affected, list it rather than subunits.

*Item 10.* Enter the estimated number of persons to be directly benefited or served during the life of the project, as described in the Part IV, Program Narrative.

*Item 11.* Preprinted on the form.

*Items 12a-12f.* Enter the amounts requested or to be contributed by Federal and non-Federal sources for the total project period, if that period is 17 months or less; if the proposed project period exceeds 17 months, enter budget for the first 12 months.

*Item 12a.* Enter the amount of Federal funds requested. This amount should be no greater than the maximum amount specified in the priority area description.

*Items 12b-12e.* Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. These items (b-e) are considered cost-sharing or "matching funds." It is important that the dollar amounts entered here (the non-Federal share) total at least 25 percent of the total project cost (the requested Federal funds plus funds from non-Federal sources) for the project period if that period is 17 months or less or for the first 12 months if the project period exceeds 17 months.

*Item 12f.* Enter the sum of items 12a-12e.

*Item 13a.* Enter the number of the Congressional District where the principal office is located.

*Item 13b.* Enter the number of the Congressional districts(s) where the project will be located. If State-wide, a several state effort, or nationwide, enter "00."

*Item 14.* Preprinted on the form.

*Item 15.* Enter the desirable start date for the project, beginning on or after February 1, 1989. Most awards made from this program announcement will have start dates between February 1 and September 30, 1989.

*Item 16.* Enter the estimated number of months to complete the project after Federal funds are available. Projects are

generally for 12 months, 24 months or 36 months or for the duration specified in the priority area description. Ensure that this number does not exceed the limitation indicated in the priority area description.

*Item 17.* N/A.

*Item 18.* Enter deadline date for submittal of applications as specified in Part III, B.

*Item 19.* Preprinted on the form.

*Item 20.* N/A.

*Item 21.* Preprinted on the form.

*Item 22a.* Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the attached listing. Review of the application is at the discretion of the SPOC. The SPOC will verify the data noted on the application. If there is a discrepancy in dates, the SPOC may request that the Federal agency delay and proposed funding until the full review time of 60 days is afforded.

*Item 22b.* Check the appropriate box if application is not covered by E.O. 12372.

*Item 23a.* Enter the name and title of the Certifying Representative of legal applicant.

*Item 23b.* Original signature of the Certifying Representative named in Item 23a.

*Items 24-33.* Leave blank.

## 2. SF 424, Part II, Project Approval Information

Negative answers will not require an explanation unless HDS requests more information at a later date. All "yes" answers must be explained on a separate page in accordance with these instructions.

*Item 1.* Provide the name of the governing body establishing the priority system and the priority rating assigned to this project. If the priority rating is not available, give the approximate date that it will be obtained.

*Item 2.* Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval. If the clearance is not available, give the approximate date that it will be obtained.

*Item 3.* Furnish the name of the approving agency and the approval date. If the approval has not been received, state approximately when it will be obtained.

*Item 4.* Show whether the approved comprehensive plan is State, local or regional; or, if none of these, explain the scope of the plan. Give the location where the approved plan is available for examination, and state whether this project is in conformance with plan. If the plan is not available, explain why.

*Item 5.* Show the population residing or working on the Federal installation

who will benefit from this project. Federally recognized Indian reservations are not "Federal installations."

*Item 6.* Show the percentage of the project work that will be conducted on Federally-owned land or leased land. Give the name of the Federal installation and its location.

*Item 7.* Briefly describe the possible beneficial and/or harmful effect on the environment because of the proposed project. If an adverse environmental effect is anticipated, explain what action will be taken to minimize it.

*Item 8.* State the number of individuals, families, businesses or farms this project will displace.

*Item 9.* Show the CFDA number, the program number, the type of assistance, the status, the amount of each project where there is related previous, pending or anticipated assistance from another funding source.

## 3. SF 424, Part III—Budget Information

*Section A—Budget Summary.* This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs in column (f). Enter total of (e) and (f) in column (g).

*Section B—Budget Categories.* This budget which includes the Federal as well as non-Federal funding for the proposed project covers: (1) The total project period of 17 months or less or (2) the first year if the proposed project exceeds 17 months. It should relate to item 12f, total funding, on page one of the SF 424. Under column (5), enter the total (Federal and non-Federal) funds, by object class category, for the total project period.

A budget justification should be included to explain fully and justify major items, as indicated below. The budget justification should not exceed three typed pages and should follow Part III—Budget Information.

*Personnel—Line 6a.* Enter the total costs of salaries and wages of applicant/grantee staff. In the budget justification, identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project as part of the budget justification. Do not include the costs of consultants, which should be included on line h. Other.

*Fringe Benefits—Line 6b.* Enter the total costs of fringe benefits unless treated as part of an approved indirect



cost rate. Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc., in the budget justification.

**Travel—Line 6c.** Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation. Provide a break-down for requested travel costs in the budget justification. Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

**Equipment—Line 6d.** Enter the total costs of all equipment to be acquired by the project. "Equipment" is non-expendable tangible personal property having a useful life of more than two years and an acquisition cost of \$500 or more per unit. An applicant may use its own definition, provided that it would at least include all non-expendable personal property as defined in the preceding sentence.

**Supplies—Line 6e.** Enter the total costs of all tangible expendable personal property (supplies) other than those included on line 6d. Specify general categories of supplies and costs in the budget justification.

**Contractual—Line 6f.** Enter the total costs of all contracts, including: (1) Procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and, (2) contracts with secondary recipient organizations including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. Attach a list of contractors indicating the name of the organization, the purpose of the contract and the estimated dollar amount of the award as part of the budget justification.

Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide back-up documentation identifying the name of contractor, purpose of contract and major cost elements.

**Construction—Line 6g.** Leave blank since new construction is not allowable and HDS funds are rarely used under this program announcement for either renovation or repair.

**Other—Line 6h.** Enter the total of all other costs. Such costs, where

applicable, may include, but are not limited to, insurance, medical and dental costs, noncontractual fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, postage, printing and publication, computer use, training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

**Total Direct Charges—Line 6i.** Show the total of Lines 6a through 6h.

**Indirect Charges—Line 6j.** Enter the total amount of indirect costs. If no indirect costs are requested, enter "none." Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency. Enclose a copy of this agreement as part of the amount of indirect costs determined in accordance with HHS requirements.

In the case of training grants to other than State or local governments (as defined in 45 CFR Part 74), the reimbursement of indirect costs will be limited to the lesser of the negotiated or actual indirect cost rate or 8 percent of the amount allowed for direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations. It should be noted that when indirect charges are included, these charges should not also be charged as direct charges to the grant.

**Total—Line 6k.** Enter the total amounts of Lines 6i and 6j.

**Program Income—Line 7.** Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Describe the nature, source, and anticipated use of income in the Program Narrative.

**In-Kind Contributions—Line 8.** After program income, enter the value of in-kind contributions. In-kind contributions are defined in Title 45 of the Code of Federal Regulations, § 74.51 as, "property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant." These in-kind contributions are part of the total budget. Total direct costs (Federal plus non-Federal), plus indirect costs (Federal plus non-Federal), plus in-

kind contributions equal the total approved budget.

**Section E—Budget Estimate of Federal Funds Needed For Balance of the Project.** This section should only be completed if the total project period exceeds 17 months.

**Totals—Line 20.** For projects that will have more than one budget period, enter the estimated required Federal funds for the second budget period (months 13 through 24) under column (b) First. If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under (c) Second. Columns (d) and (e) are not applicable since HDS limits funding under this announcement to a three year maximum.

#### 4. SF 424, Part IV, Program Narrative

Describe the project proposed in response to this announcement addressing the specific concerns mentioned under the priority area description in Part II. The narrative should provide information on how the application meets the evaluation criteria which are the same as the format below. This narrative should be no less than 6 double-spaced pages and not more than 25 double-spaced pages. It should be typed on a single-side of 8½" x 11" plain white paper with 1" margins on both sides. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Need for the Project" as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The Part IV, Program Narrative, is a very important part of the application. It should be clear, concise and specific to the priority area under which the application is being submitted.

For the FY 1988 CDP process, HDS developed an "Exemplary Composite Application Narrative" to provide prospective applicants with samples of narratives from funded applications. This has been updated for FY 1989 to include portions of applications funded in FY 1988. The comments made by the reviewers using the evaluation criteria are indicated in the margins. This document is available upon request by contacting HDS at the application mailing address.

Applicants (except those under priority areas 4.4.A, 4.4.B, 4.4.C, 4.4.D and 4.4.E) are required to follow the format described below in preparing their applications, using the five headings for sections of the application. However the number of pages for each section is given as a suggestion only.



More information on the exceptions follows the five sections listed below. The specific information to be included under each heading was discussed previously under the "Evaluation Criteria."

The five sections are:

- (a) *Need for the Project (Objectives)*: (five pages double-spaced);
- (b) *Project Methodology—Project Implementation Plan*: (seven pages double-spaced);
- (c) *Expected Outcomes*: (four pages double-spaced);
- (d) *Dissemination and Utilization*: (four pages double-spaced); and
- (e) *Level of Effort*: (five pages double-spaced).

Applications submitted under the following priority areas: Child Welfare Traineeships (4.4.A), In-Service Training (4.4.B), Indian Child Welfare Training (4.4.C), Special Grants for HBCUs (4.4.D), and Collaboration Between Schools of Social Work and Child Welfare Agencies (4.4.E) should not be prepared using this format since the dissemination and utilization criterion has been eliminated. The Child Welfare Training Background section describes how the 15 points for the eliminated criterion have been redistributed.

#### 5. Organizational Capability Statement

A brief (maximum two pages double-spaced) background description of how the applicant organization, or the unit within the organization that will have responsibility for the project, is organized and the types and quantity of services it provides or research capabilities it possesses. This description should cover capabilities not included in the program narrative under "level of effort." It may include descriptions of any current or previous relevant experience or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable.

#### 6. Part V—Assurances

Applicants are required to file Part V, Assurances, and the Assurance of Compliance with the DHHS Regulations under Title VI of the Civil Rights Act of 1964 and the Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as amended. Copies of these assurances are reprinted at the end of this announcement.

For research grants involving Head Start and Runaway and Homeless Youth populations, an Assurance of Protection of Human Subjects is required. For other research projects for which human subjects may be at risk (for instance, research involving Head Start children),

an assurance may also be needed. If there is a question regarding the applicability of this assurance (located at the end of this announcement), contact the Office of Research Risks of the National Institutes of Health at (301) 496-7041.

#### G. The Application Package

Once an application is completed, it is ready to be submitted to HDS. In order to expedite the processing of applications, we request that you *adhere to the following instructions exactly*. Each application package must include:

1. A single copy of the *Checklist for a Complete Application* with all the items checked as being included in the application.
2. An original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Need for the Project" as page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as, agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation. In any case, appendices/attachments should not exceed 10 pages and may include resumes, letters of commitment, or position descriptions.

Do not include a self-addressed, stamped acknowledgment card. All applicants will be automatically notified of receipt and of the four digit identification number assigned to their application. This number and the priority area must be referred to in *ALL* subsequent communication with HDS concerning the application. If acknowledgment is not received within eight weeks after the deadline date, please notify HDS by telephone at (202) 755-4560. After an identification number is assigned and the applicant has been notified of the number, applications are filed numerically by identification number to aid in quick retrieval. It will not be possible for HDS staff to provide a timely response to inquiries about a specific application unless the identification number and the priority area are given.

#### H. Checklist for a Complete Application

The checklist below should be typed on 8½" x 11" plain white paper, completed and included in your application package. It is for your use to ensure that your application has been properly prepared.

#### Checklist

I have checked my application package to ensure that it includes the following:

- A single copy of the Checklist, with all items checked off;
- One original application signed and dated plus two copies;
- A completed SPOC certification with the date of SPOC contact entered in item 22, page 1 of the SF 424.
- Each package contains the application (original and 2 copies) for one priority area;

The original and both copies of the application include the following:

- SF-424, page 1, Application Cover Sheet;
- SF-424, Parts II and III;
- Budget justification;
- Summary description and key words;
- SF-424, Part IV, Program Narrative;
- Organizational Capability Statement;
- SF-424, Part V, Assurances; and
- Appendices/attachments.

(Federal Catalog of Domestic Assistance Numbers: 13.800 Head Start; 13.608 Child Welfare Research and Demonstration; 13.648 Child Welfare Services Training; 13.623 Runaway and Homeless Youth; 13.652 Adoption Opportunities; 13.631 Developmental Disabilities Projects of National Significance; 13.661 Native Americans Program Act; 13.647 Social Services Research—Section 1110; and 13.671 Family Violence Prevention and Services).

Dated: August 9, 1988.

Sydney J. Olson,

Assistant Secretary for Human Development Services.

William L. Engles,

Commissioner, Administration for Native Americans.

Dodie Truman Borup,

Commissioner, Administration for Children, Youth and Families.

G. Barry Nielsen,

Director, Office of Policy, Planning and Legislation.

Carolyn Doppelt Gray,

Commissioner, Administration on Developmental Disabilities.

#### Executive Order 12372—State Single Points of Contact

##### Alabama

Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 2939, Montgomery, AL 36105-0939, (205) 284-8905

##### Alaska

None

##### Arizona

Janice Dunn, Arizona State Clearinghouse, 1700 West Washington



- Avenue, Fourth Floor, Phoenix, AZ 85007, (602) 255-5004
- Arkansas**  
Joe Gillespie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, AK 72203, (501) 371-1074
- California**  
Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, CA 95814, (916) 323-7480
- Colorado**  
State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Rm. 520, Denver, CO 80203, (303) 866-2156
- Connecticut**  
Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, CT 06106-4459, (203) 566-3410
- Delaware**  
Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, DE 19903, (302) 736-3326
- District of Columbia**  
Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue NW., Washington, DC 20004, (202) 727-9111
- Florida**  
George H. Meier, Director of Intergovernmental Coordination, State Single Point of Contact, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, FL 32399-0001, (904) 488-8114
- Georgia**  
Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street SW., Atlanta, GA 30334, (404) 656-3855
- Hawaii**  
Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, Honolulu, HI 96813, (808) 548-3016 or 548-3085
- Idaho**  
None
- Illinois**  
Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, IL 62706, (217) 782-8639
- Indiana**  
Peggy Boehm, Deputy Director, State Budget Agency, 212 State House, Indianapolis, IN 46204, (317) 232-5610
- Iowa**  
Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, IA 50309, (515) 281-3725
- Kansas**  
Martin Kennedy, Intergovernmental Liaison, Department of Administration, Division of Budget, Rm. 152-E, State Capitol Bldg., Topeka, KS 66612, (913) 296-2436
- Kentucky**  
Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, KY 40601, (502) 564-2382
- Louisiana**  
Colby S. LaPlace, Assistant Secretary, Department of Urban and Community Affairs, Office of State Clearinghouse, P.O. Box 94455, Capitol Station, Baton Rouge, LA 70804, (504) 342-9790
- Maine**  
State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station No. 38, Augusta, ME 04333, (207) 289-3161
- Maryland**  
Guy W. Hager, Director, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, MD 21201-2365, (301) 225-4490
- Massachusetts**  
State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities and Development, 100 Cambridge Street, Rm. 904, Boston, MA 02202, (617) 727-3253
- Michigan**  
Michelyn Pasteur, Deputy Director, Local Development Services, Department of Commerce, P.O. Box 30225, Lansing, MI 48909, (517) 373-1838  
**Note:** Please direct correspondence and questions to: Manager, Federal Project Review System, 6500 Mercantile Way, Suite 2, Lansing, MI 48911, (517) 334-6190
- Minnesota**  
None
- Mississippi**  
Marlan Baucum, Office of Federal State Programs, Department of Planning and Policy, 2000 Walter Sillers Building, 500 High Street, Jackson, MS 39202, (601) 359-3150
- Missouri**  
Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, MO 65102, (314) 751-4834
- Montana**  
Deborah Davis, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Room 210—State Capitol, Helena, MT 59620, (406) 444-5522
- Nebraska**  
None
- Nevada**  
Jean Ford, Nevada Office of Community Services, Capitol Complex, Carson City, NV 89710, (702) 885-4420  
**Note:** Please direct correspondence and questions to: John Walker, Clearinghouse Coordinator
- New Hampshire**  
John E. Dabuliewicz, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, NH 03301, (603) 271-2155
- New Jersey**  
Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, NJ 08625-0803, (609) 292-6613  
**Note:** Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, NJ 08625-0803, (609) 292-9025
- New Mexico**  
Dean Olson, Director, Management and Program Analysis Division, Department of Finance and Administration, Room 424, State Capitol Building, Santa Fe, NM 87503, (505) 827-3885



*New York*

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, NY 12224, (518) 474-1605

*North Carolina*

Chrys Baggett, Director, Intergovernmental Relations, North Carolina Department of Administration, 116 West Jones Street, Raleigh, NC 27611, (919) 733-0499

*North Dakota*

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, ND 58505, (701) 224-2094

*Ohio*

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, OH 43266-0411, (614) 466-0698

Note: Please direct correspondence and questions to: Linda E. Wise

*Oklahoma*

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, OK 73116, (405) 843-9770

*Oregon*

Attn: Delores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street NE., Salem OR 97310, (503) 373-1998

*Pennsylvania*

Laine A. Heltebride, Special Assistant, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg PA 17108, (717) 783-3700

*Rhode Island*

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, RI 02907, (401) 277-2656

Note: Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

*South Carolina*

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Rm. 477, Columbia, SC 29201, (803) 734-0435

*South Dakota*

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, SD 57501, (605) 773-3212

*Tennessee*

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, TN 37219, (615) 741-1676

*Texas*

Thomas C. Adams, Office of Budget and Planning, Office of the Governor, P.O. Box 12428, Austin, TX 78711, (512) 463-1778

*Utah*

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, UT 84114, (801) 533-5245

*Vermont*

Bernard D. Johnson, Assistant Director, Office of Policy Research and Coordination, Pavilion, Office Building, 109 State Street, Montpelier, VT 05602, (802) 828-3326

*Virginia*

Nancy Miller, Intergovernmental Affairs Review Officer, Department of Housing and Community Development, 205 North 4th Street, Richmond, VA 23219, (804) 786-4474

*Washington*

Catherine Townley, Coordinator, Intergovernmental Review Process, Department of Community Development, Ninth and Columbia Building, Olympia, WA 98504-4151, (206) 753-4978

*West Virginia*

Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building No. 6, Rm. 553, Charleston, WV 25305, (304) 348-4010

*Wisconsin*

James R. Krauser, Secretary, Wisconsin Department of Administration, 101 South Webster, CEF 2, P.O. Box 7864, Madison, WI 53707-7864, (608) 266-1741

Note: Please direct correspondence and questions to: Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration

*Wyoming*

Ann Redman, State Single Point of Contact, Wyoming State

Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, WY 82002, (307) 777-7574

*American Samoa*

None

*Guam*

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agaña, GU 96910, (671) 472-2285

*Northern Mariana Islands*

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

*Puerto Rico*

Patricia G. Custodio/Isael Soto Marrero, Chairman/Director, Minillas Government Center, P.O. Box 41119, San Juan, PR 00940-9985, (809) 727-4444

*Virgin Islands*

Jose L. George, Director, Office of Management and Budget, No. 32 and 33 Kongens Gade, Charlotte Amalie, VI 00802, (809) 774-0750

**List of Key Words**

Abused  
Accreditation  
Adoption  
Advocacy and guardianship  
Adult day care (use home care with aging and elderly)  
Adults  
Aging and elderly  
Aging-out  
Agriculture  
Alcoholism  
Allied professional education  
Alternative financing  
Asians  
At-Risk Youth  
Audio-visual  
Barrier-free design  
Blacks  
Board and care  
Budgeting and finance  
Business development training  
Cable television  
Career and vocational education  
Case Management  
Challenge Grants  
Child abuse and neglect  
Child care  
Child care centers  
Child Development  
Child Welfare  
Children  
Clearinghouse  
Client outcome measures  
Collaboration  
Colleges and Universities



- Community Care
- Community-based
- Community Foundation
- Competitive employment
- Comprehensive care
- Computer networks
- Computers
- Conferences
- Congregate housing
- Consumer education
- Continuing education
- Contracting
- Cooperatives
- Coordination
- Corrections
- Counseling
- Courts
- Crisis intervention
- Cross-cultural
- Cross-cutting
- Cultural activities
- Curriculum
- Curriculum development
- Data collection
- Day care
- Day care centers
- Deinstitutionalization
- Design
- Developmental Child Care
- Disabled
- Developmental Disabilities
- Dissemination
- Dropouts
- Dysfunctional Families
- Economic development
- Education and training
- Effectiveness measures
- Efficiency
- Elderly Persons
- Emergency services
- Emergency shelters
- Employer-supported human services
- Employment
- Entrepreneurship
- Environment
- Environmental design
- Evaluation
- Exploited youth
- Families
- Family counseling
- Family day care
- Family Preservation
- Family support/Caregiving
- Family Violence
- Films
- Finance
- Fire safety
- Fiscal management
- Food and nutrition
- Food banks
- Forecasting
- Foster care
- Foster grandparents
- Foundations
- Frail elderly
- Friendly visitors
- Gerontology training
- Group homes
- Guardianship
- Handbooks
- Historically Black Colleges and Universities (use HBCU)
- Head Start
- Head Start Children with Handicaps
- Health
- Hispanics
- Home care
- Home equity conversions
- Homeless
- Hospitals
- Hospices and nursing homes
- Housing
- Human services
- Immigrants and refugees
- Income generation
- Independent living
- Indians
- Infants and toddlers
- Informal caregivers
- Information centers
- Information and referral
- In-home care
- Institutionalization
- Information transfer
- Interagency cooperation
- Interdisciplinary
- Intergenerational
- Interstate agreements
- Investigations
- Isolated elderly
- Job bank
- Job clubs
- Job placement
- Judicial system
- Juvenile justice
- Latchkey and school-age children
- Law enforcement
- Legal
- Legal counseling
- Legislation and model codes
- Liability and Legal Issues
- Linkages
- Living skills
- Local Government
- Low-cost alternatives
- Low-income
- Mainstreaming
- Management
- Management Information Systems
- Management training
- Manuals
- Marketing
- Materials
- Meals
- Media
- Medical
- Mental Health
- Mental health and Special Needs
  - Adoption
- Mentally disabled
- Mentors
- Microcomputers
- Minorities
- Native Alaskans
- Native Americans
- Native Hawaiians
- Needs assessment
- Neglect
- Newsletters
- Newspapers
- Nursing Homes
- Nutrition counseling
- Older Persons
- On-the-job training
- Outreach
- Parent
- Parent education
- Peer counseling
- Performance-based contracting
- Permanency planning
- Placement Prevention
- Physically disabled
- Planning
- Preschools
- Prevention
- Preventive care
- Primary schools
- Private sector
- Prostitution
- Public education
- Public/Private Partnership
- Public-private cooperation
- Radio
- Rate-setting
- Readiness skills
- Recreation
- Recruitment
- Recycling
- Referral
- Refugees
- Research
- Residential care
- Resource allocation
- Respite care
- Retirement
- Runaways
- Rural
- Samoans
- School-age children
- Secondary schools
- Self-care
- Self-help
- Self-Sufficiency
- Sexual Abuse
- Seminars
- Sheltered workshops
- Single parents
- Small business
- Social services
- Software
- Special education
- Special needs adoption
- Speech impairment
- Standards
- Support groups
- Target populations
- Television
- Taxes
- Technical assistance
- Technology transfer
- Teenage parents
- Teenage pregnancy
- Telecommunications
- Therapeutic day care
- Toddlers
- Training



Training of trainers  
Transitioning  
Transportation  
Treatment  
Tribally Controlled Community Colleges  
Unemployed  
Urban  
User fees  
Video  
Visual Impairment  
Vocational training  
Volunteers  
Vouchers  
Women  
Workplace  
Youth  
Youth 2000

BILLING CODE 4130-01-M



Priority Area Number:

4.1

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE		2. APPLICANT'S APPLICATION IDENTIFIER	3. STATE APPLICATION IDENTIFIER	4. NUMBER	
1. TYPE OF SUBMISSION (Mark appropriate box) <input type="checkbox"/> NOTICE OF INTENT (OPTIONAL) <input type="checkbox"/> PREAPPLICATION <input checked="" type="checkbox"/> APPLICATION		b. DATE Year month day 19 88 11 10	NOTE TO BE ASSIGNED BY STATE	a. NUMBER 051884 b. DATE ASSIGNED Year month day 19 88 10 15	
Leave Blank					
4. LEGAL APPLICANT/RECIPIENT a. Applicant Name Department of Human Services b. Organization Unit Division of Youth and Family Services c. Street/P.O. Box One S. Montgomery Street d. City Trenton e. County Mercer f. State NJ g. ZIP Code 08670 h. Contact Person (Name) Harriet Thomas i. Telephone No. (609) 671-8237			5. EMPLOYER IDENTIFICATION NUMBER (EIN) 14 387 7129		
7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a brief description of the project) Partners in Foster Care			6. PRO-GRAM (From CFDA) a. NUMBER 1   3   *   6   0   8 b. TITLE Child Welfare R&D		
9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.) Newark, NJ			8. TYPE OF APPLICANT/RECIPIENT A—State B—Interstate C—Substate D—County E—City F—School District G—Special Purpose District H—Community Action Agency I—Higher Educational Institution J—Indian Tribe K—Other (Specify): Enter appropriate letter A		
12. PROPOSED FUNDING a. FEDERAL \$ 125,000 .00 b. APPLICANT 42,000 .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. Total \$ 167,000 .00		13. CONGRESSIONAL DISTRICTS OF: a. APPLICANT 5 b. PROJECT 5, 6 & 7 15. PROJECT START DATE 19 89 02 01 16. PROJECT DURATION 24 Months 18. DATE DUE TO FEDERAL AGENCY 19 88 11 10		11. TYPE OF ASSISTANCE A—Basic Grant B—Supplemental Grant C—Loan D—Insurance E—Other Enter appropriate letter(s) A	
19. FEDERAL AGENCY TO RECEIVE REQUEST a. ORGANIZATIONAL UNIT (IF APPROPRIATE) Department of Health and Human Services b. ADMINISTRATIVE CONTACT (IF KNOWN) Office of Human Development Svcs. Division of Grants & Contracts c. ADDRESS 200 Independence Avenue, SW., HHH Building, Room 724-F Washington, D. C. 20201 ATTN: HDS-88-3			14. TYPE OF APPLICATION A—New B—Renewal C—Revision D—Continuation E—Augmentation Enter appropriate letter A 17. TYPE OF CHANGE (For 14c or 14d) A—Increase Dollars B—Decrease Dollars C—Increase Duration D—Decrease Duration E—Cancellation Enter appropriate letter(s) N/A		
22. THE APPLICANT CERTIFIES THAT: To the best of my knowledge and belief, the data in this preapplication/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.			20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER N/A 21. REMARKS ADDED <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
23. CERTIFYING REPRESENTATIVE a. TYPED NAME AND TITLE Rex Calhoun, Commissioner b. SIGNATURE Rex Calhoun			24. APPLICATION RECEIVED 19 25. FEDERAL APPLICATION IDENTIFICATION NUMBER 26. FEDERAL GRANT IDENTIFICATION		
27. ACTION TAKEN <input type="checkbox"/> a. AWARDED <input type="checkbox"/> b. REJECTED <input type="checkbox"/> c. RETURNED FOR AMENDMENT <input type="checkbox"/> d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE <input type="checkbox"/> e. DEFERRED <input type="checkbox"/> f. WITHDRAWN			28. FUNDING a. FEDERAL 4 00 b. APPLICANT 00 c. STATE 00 d. LOCAL 00 e. OTHER 00 f. TOTAL 4 00		
29. ACTION DATE 19 30. STARTING DATE 19 31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number) 32. ENDING DATE 19 33. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No					



OMB NO. 0348-0006

## PART III - BUDGET INFORMATION

## SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1 N/A	N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A
2 N/A	N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A
3 N/A	N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A
4 N/A	N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A
5 TOTALS	HDS/CDP	\$ 0	\$ 0	125,000	\$ 42,000	\$167,000

## SECTION B - BUDGET CATEGORIES

(Federal &amp; non-Federal)

6. Object Class Categories	Grant Program Function or Activity				Total (5)
	(1)	(2)	(3)	(4)	
a Personnel	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ 95,000
b Fringe Benefits	\$ N/A	\$ N/A	\$ N/A	\$ N/A	16,250
c Travel	\$ N/A	\$ N/A	\$ N/A	\$ N/A	2,000
d Equipment	\$ N/A	\$ N/A	\$ N/A	\$ N/A	4,000
e Supplies	\$ N/A	\$ N/A	\$ N/A	\$ N/A	7,350
f Contractual	\$ N/A	\$ N/A	\$ N/A	\$ N/A	5,000
g Construction	\$ N/A	\$ N/A	\$ N/A	\$ N/A	0
h Other	\$ N/A	\$ N/A	\$ N/A	\$ N/A	11,500
i. Total Direct Charges	\$ N/A	\$ N/A	\$ N/A	\$ N/A	141,000
j. Indirect Charges	\$ N/A	\$ N/A	\$ N/A	\$ N/A	19,000
k. TOTALS	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ 160,000
l. In-Kind Contr.	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ 7,000
m. Total Budget	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ 167,000
7. Program Income	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ 0

## SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (YEARS)			
	(b) FIRST	(c) SECOND	(d) THIRD	(e) FOURTH
15 N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A
17 N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A
18 N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A
19 N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A
20 TOTALS	\$ 125,000	\$ 0	\$ N/A	\$ N/A



Priority Area Number:  

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE		2. APPLICANT'S APPLICATION IDENTIFIER	4. NUMBER <div style="background: repeating-linear-gradient(45deg, transparent, transparent 2px, black 2px, black 4px); height: 20px; width: 100%;"></div>	3. STATE APPLICATION IDENTIFIER <small>NOTE: TO BE ASSIGNED BY STATE</small>	a. NUMBER
1. TYPE OF SUBMISSION <small>(Mark appropriate box)</small>	<input type="checkbox"/> NOTICE OF INTENT (OPTIONAL) <input type="checkbox"/> PREAPPLICATION <input checked="" type="checkbox"/> APPLICATION	b. DATE Year month day 19	b. DATE ASSIGNED Year month day 19		
		Leave Blank			
4. LEGAL APPLICANT/RECIPIENT			5. EMPLOYER IDENTIFICATION NUMBER (EIN)		
a. Applicant Name b. Organization Unit c. Street/P.O. Box d. City f. State h. Contact Person (Name & Telephone No.)			e. County g. ZIP Code		
7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)			6. PROGRAM <small>(From CFDA)</small>		
			a. NUMBER <span style="border: 1px solid black; padding: 0 10px;">  *  </span> b. TITLE MULTIPLE <input type="checkbox"/>		
9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)			8. TYPE OF APPLICANT/RECIPIENT		
			A—State B—Interstate C—Substate D—County E—City F—School District G—Special Purpose District H—Community Action Agency I—Higher Educational Institution J—Indian Tribe K—Other (Specify): Enter appropriate letter <input type="checkbox"/>		
10. ESTIMATED NUMBER OF PERSONS BENEFITING			11. TYPE OF ASSISTANCE		
			A—Basic Grant B—Supplemental Grant C—Loan D—Insurance E—Other Enter appropriate letter(s) <span style="border: 1px solid black; padding: 0 5px;">A</span>		
12. PROPOSED FUNDING		13. CONGRESSIONAL DISTRICTS OF:		14. TYPE OF APPLICATION	
a. FEDERAL \$ .00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. Total \$ .00		a. APPLICANT b. PROJECT 15. PROJECT START DATE Year month day 19 16. PROJECT DURATION Months 19 88 11 10 18. DATE DUE TO FEDERAL AGENCY Year month day 19 88 11 10		A—New B—Renewal C—Revision D—Continuation E—Augmentation Enter appropriate letter <span style="border: 1px solid black; padding: 0 5px;">A</span>	
17. TYPE OF CHANGE (For 14c or 14e) A—Increase Dollars B—Decrease Dollars C—Increase Duration D—Decrease Duration E—Cancellation F—Other (Specify): N/A Enter appropriate letter(s) <span style="border: 1px solid black; padding: 0 5px;">N/A</span>					
19. FEDERAL AGENCY TO RECEIVE REQUEST			20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER		
a. ORGANIZATIONAL UNIT (IF APPROPRIATE) Office of Human Development Svcs. c. ADDRESS 200 Independence Avenue, SW., HHH Building, Room 724-F Washington, D. C. 20201 ATTN: HDS-88-3			b. ADMINISTRATIVE CONTACT (IF KNOWN) Division of Grants & Contracts N/A		
22. THE APPLICANT CERTIFIES THAT:			21. REMARKS ADDED		
To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.			a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____ b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 <input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW <input type="checkbox"/>		
23. CERTIFYING REPRESENTATIVE			24. APPLICATION RECEIVED 19		
a. TYPED NAME AND TITLE b. SIGNATURE			25. FEDERAL APPLICATION IDENTIFICATION NUMBER		
26. FEDERAL GRANT IDENTIFICATION			27. ACTION TAKEN		
			<input type="checkbox"/> a. AWARDED <input type="checkbox"/> b. REJECTED <input type="checkbox"/> c. RETURNED FOR AMENDMENT <input type="checkbox"/> d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE <input type="checkbox"/> e. DEFERRED <input type="checkbox"/> f. WITHDRAWN		
28. FUNDING			29. ACTION DATE 19		
a. FEDERAL \$ .00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. TOTAL \$ .00			30. STARTING DATE 19		
			31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)		
			32. ENDING DATE 19		
			33. REMARKS ADDED		
			<input type="checkbox"/> Yes <input type="checkbox"/> No		



OMB NO. 0348-0006

**PART II  
PROJECT APPROVAL INFORMATION**

Item 1.  
Does this assistance request require  
State, local regional, or other priority rating? \_\_\_\_\_ Yes \_\_\_\_\_ No  
Name of Governing Body \_\_\_\_\_  
Priority Rating \_\_\_\_\_

Item 2.  
Does this assistance request require State, or local  
advisory, educational or health clearances? \_\_\_\_\_ Yes \_\_\_\_\_ No  
Name of Agency or Board \_\_\_\_\_  
(Attach Documentation)

Item 3.  
Does this assistance request require State, local,  
regional or other planning approval? \_\_\_\_\_ Yes \_\_\_\_\_ No  
Name of Approving Agency \_\_\_\_\_  
Date \_\_\_\_\_

Item 4.  
Is the proposed project covered by an approved compre-  
hensive plan? \_\_\_\_\_ Yes \_\_\_\_\_ No  
Check one: State ☐  
Local ☐  
Regional ☐  
Location of Plan \_\_\_\_\_

Item 5.  
Will the assistance requested serve a Federal  
installation? \_\_\_\_\_ Yes \_\_\_\_\_ No  
Name of Federal Installation \_\_\_\_\_  
Federal Population benefiting from Project \_\_\_\_\_

Item 6.  
Will the assistance requested be on Federal land or  
installation? \_\_\_\_\_ Yes \_\_\_\_\_ No  
Name of Federal Installation \_\_\_\_\_  
Location of Federal Land \_\_\_\_\_  
Percent of Project \_\_\_\_\_

Item 7.  
Will the assistance requested have an impact or effect  
on the environment? \_\_\_\_\_ Yes \_\_\_\_\_ No  
See instructions for additional information to be  
provided.

Item 8.  
Will the assistance requested cause the displacement  
of individuals, families, businesses, or farms? \_\_\_\_\_ Yes \_\_\_\_\_ No  
Number of:  
Individuals \_\_\_\_\_  
Families \_\_\_\_\_  
Businesses \_\_\_\_\_  
Farms \_\_\_\_\_

Item 9.  
Is there other related assistance on this project previous,  
pending, or anticipated? \_\_\_\_\_ Yes \_\_\_\_\_ No  
See instructions for additional information to be  
provided.



## PART III - BUDGET INFORMATION

## SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1 N/A	N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A
2 N/A	N/A	N/A	N/A	N/A	N/A	N/A
3 N/A	N/A	N/A	N/A	N/A	N/A	N/A
4 N/A	N/A	N/A	N/A	N/A	N/A	N/A
5 TOTALS	HDS/CDP	\$ - 0 -	\$ - 0 -	\$	\$	\$

## SECTION B - BUDGET CATEGORIES

(Federal &  
non-Federal)

6 Object Class Categories	- Grant Program, Function or Activity				Total (5)
	(1)	(2)	(3)	(4)	
a Personnel	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$
b Fringe Benefits	N/A	N/A	N/A	N/A	
c Travel	N/A	N/A	N/A	N/A	
d Equipment	N/A	N/A	N/A	N/A	
e Supplies	N/A	N/A	N/A	N/A	
f Contractual	N/A	N/A	N/A	N/A	
g Construction	N/A	N/A	N/A	N/A	
h Other	N/A	N/A	N/A	N/A	
i Total Direct Charges	N/A	N/A	N/A	N/A	
j Indirect Charges	N/A	N/A	N/A	N/A	
k TOTALS	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$
l In-Kind Contr.	N/A	N/A	N/A	N/A	\$
m Total Budget	N/A	N/A	N/A	N/A	\$
7 Program Income	N/A	N/A	N/A	N/A	\$

## SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program		FUTURE FUNDING PERIODS (YEARS)			
		(b) FIRST	(c) SECOND	(d) THIRD	(e) FOURTH
16	N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A
17	N/A	N/A	N/A	N/A	N/A
18	N/A	N/A	N/A	N/A	N/A
19	N/A	N/A	N/A	N/A	N/A
20 TOTALS	HDS/CDP	\$	\$	\$ N/A	\$ N/A



## PART V

## ASSURANCES

The Applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements, including 45 CFR Part 74 and OMB Circulars No. A-102, A-110 and applicable cost principles, (Circulars: A-21, "Educational Institutions"; A-87, "Cost Principles for State and Local Governments"; and A-122, "Nonprofit Organizations"), as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also the applicant assures and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
  2. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.
  3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.
  4. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally-assisted programs.
  5. It will comply with the provisions of the Hatch Act which limit the political activity of State and local government employees.
  6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201) as they apply to employees of institutions of higher education, hospitals, other nonprofit organizations, and to employees of State and local governments who are not employed in integral operations in areas of traditional governmental functions.
- Head Start, Certification of Minimum Wage:  
It certifies that it has reviewed the salary structures and wages for all positions and certifies that persons employed in carrying out this program shall not receive compensation at a rate which is (a) in excess of the average rate of compensation paid in the area to persons providing substantially comparable services; or (b) less than the minimum wage rate prescribed in section 6(a) of the Fair Labor Standards Act of 1938. Documentation of the methods by which it established wage scales is available in their files for review by audit and HDS personnel.
7. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
  8. It will give the sponsoring agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant, including the records of contractors and subcontractors performing under the grant.
  9. It will comply with all requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.



10. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

11. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.
12. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the grantee's activity and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.
13. Applicants for the Administration for Native Americans Programs, hereby certify in accordance with 45 CFR 1336.53, that the financial assistance provided by the Office of Human Development Services for the specified activities to be performed under this program, will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.
14. It will comply with the Age Discrimination Act of 1975 enacted as an amendment to the Older Americans Act (Pub. L. 94-135), which provides that: No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity for which the applicant receives Federal financial assistance.
15. It will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto, which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance.
16. It will comply with Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.) which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance (whether or not the programs or activities are offered or sponsored by an educational institution).
17. It will comply with Pub. L. 93-348 as implemented by Part 46 of Title 45 (45 CFR 46, 42 U.S.C. 2891) regarding the protection of human subjects involved in research, development, and related activities supported by the grant.
18. It will comply with the equal opportunity clause prescribed by Executive Order 11246, as amended, and will require that its subrecipients include the clause in all construction contracts and subcontracts which have or are expected to have an aggregate value within a 12-month period exceeding \$10,000, in accordance with Department of Labor regulations at 41 CFR Part 60.
19. It will include, and will require that its subrecipients include, the provision set forth in 29 CFR 5.5(c) pertaining to overtime and unpaid wages in any nonexempt nonconstruction contract which involves the employment of mechanics and laborers (including watchmen, guards, apprentices, and trainees) if the contract exceeds \$2,500.



**ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF  
HEALTH AND HUMAN SERVICES REGULATION UNDER  
TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

\_\_\_\_\_  
Name of Applicant (type or print) (hereinafter called the "Applicant") HEREBY

AGREES THAT it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 CFR Part 80) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant.

Date \_\_\_\_\_

By \_\_\_\_\_  
Signature and Title of Authorized Official

\_\_\_\_\_  
Area Code — Telephone Number

\_\_\_\_\_  
Applicant (type or print)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip



**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
ASSURANCE OF COMPLIANCE WITH SECTION 504 OF THE  
REHABILITATION ACT OF 1973, AS AMENDED**

The undersigned (hereinafter called the "recipient") HEREBY AGREES THAT it will comply with section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto.

Pursuant to § 84.5(a) of the regulation [45 C.F.R. 84.5(a)], the recipient gives this Assurance in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts (except procurement contracts and contracts of insurance or guaranty), property, discounts, or other federal financial assistance extended by the Department of Health and Human Services after the date of this Assurance, including payments or other assistance made after such date on applications for federal financial assistance that were approved before such date. The recipient recognizes and agrees that such federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance and that the United States will have the right to enforce this Assurance through lawful means. This Assurance is binding on the recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the recipient.

This Assurance obligates the recipient for the period during which federal financial assistance is extended to it by the Department of Health and Human Services or, where the assistance is in the form of real or personal property, for the period provided for in § 84.5(b) of the regulation [45 C.F.R. 84.5(b)].

The recipient: [Check (a) or (b)]

- a. ( ) employs fewer than fifteen persons;
- b. ( ) employs fifteen or more persons and, pursuant to § 84.7(a) of the regulation [45 C.F.R. 84.7(a)], has designated the following person(s) to coordinate its efforts to comply with the HHS regulation:

\_\_\_\_\_  
Name of Designee(s) — Type or Print

\_\_\_\_\_  
Name of Recipient — Type or Print

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
(IRS) Employer Identification Number

\_\_\_\_\_  
City

\_\_\_\_\_  
Area Code — Telephone Number

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

I certify that the above information is complete and correct to the best of my knowledge.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature and Title of Authorized Official

If there has been a change in name or ownership within the last year, please PRINT the former name below:



OMB No. 0925-0637

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

PROTECTION OF HUMAN SUBJECTS  
ASSURANCE/CERTIFICATION/DECLARATION
☐ GRANT    ☐ CONTRACT    ☐ FELLOW    ☐ OTHER  
☐ New    ☐ Competing continuation    ☐ Noncompeting continuation    ☐ Supplemental

APPLICATION IDENTIFICATION NO. (if known)

☐ ORIGINAL    ☐ FOLLOWUP    ☐ EXEMPTION  
 (previously undesignated)

**POLICY:** A research activity involving human subjects that is not exempt from HHS regulations may not be funded unless an Institutional Review Board (IRB) has reviewed and approved the activity in accordance with Section 474 of the Public Health Service Act as implemented by Title 45, Part 46 of the Code of Federal Regulations (45 CFR 46—as revised). The applicant institution must submit certification of IRB approval to HHS unless the applicant institution has designated a specific exemption under Section 46.101(b) which applies to the proposed research activity. Institutions with an assurance of compliance on file with HHS which covers the proposed activity should submit certification of IRB review and approval with each application. (In exceptional cases, certification may be accepted up to 60 days after the receipt date for which the application is submitted.) In the case of institutions which do not have an assurance of compliance on file with HHS covering the proposed activity, certification of IRB review and approval must be submitted within 30 days of the receipt of a written request from HHS for certification.

## 1. TITLE OF APPLICATION OR ACTIVITY

## 2. PRINCIPAL INVESTIGATOR, PROGRAM DIRECTOR, OR FELLOW

## 3. FOOD AND DRUG ADMINISTRATION REQUIRED INFORMATION (see reverse side)

## 4. HHS ASSURANCE STATUS

☐ This institution has an approved assurance of compliance on file with HHS which covers this activity.

\_\_\_\_\_ Assurance identification number    \_\_\_\_\_ IRB identification number

☐ No assurance of compliance which applies to this activity has been established with HHS, but the applicant institution will provide written assurance of compliance and certification of IRB review and approval in accordance with 45 CFR 46 upon request.

## 5. CERTIFICATION OF IRB REVIEW OR DECLARATION OF EXEMPTION

☐ This activity has been reviewed and approved by an IRB in accordance with the requirements of 45 CFR 46, including its relevant Subparts. This certification fulfills, when applicable, requirements for certifying FDA status for each investigational new drug or device. (See reverse side of this form.)

 \_\_\_\_\_ Date of IRB review and approval. (If approval is pending, write "pending." Followup certification is required.)  
 (month/day/year)

☐ Full Board Review    ☐ Expedited Review

☐ This activity contains multiple projects, some of which have not been reviewed. The IRB has granted approval on condition that all projects covered by 45 CFR 46 will be reviewed and approved before they are initiated and that appropriate further certification (Form HHS 596) will be submitted.

☐ Human subjects are involved, but this activity qualifies for exemption under 46.101(b) in accordance with paragraph \_\_\_\_\_ (insert paragraph number of exemption in 46.101(b), 1 through 5), but the institution did not designate that exemption on the application.

## 6. Each official signing below certifies that the information provided on this form is correct and that each institution assumes responsibility for assuring required future reviews, approvals, and submissions of certification.

APPLICANT INSTITUTION	COOPERATING INSTITUTION
NAME, ADDRESS, AND TELEPHONE NO.	NAME, ADDRESS, AND TELEPHONE NO.
NAME AND TITLE OF OFFICIAL (print or type)	NAME AND TITLE OF OFFICIAL (print or type)
SIGNATURE OF OFFICIAL LISTED ABOVE (and date)	SIGNATURE OF OFFICIAL LISTED ABOVE (and date)



**3. FOOD AND DRUG ADMINISTRATION REQUIRED INFORMATION (from front side)**

According to 45 CFR 48.121, if an application is made to HHS requiring certification and involving use of an investigational new drug or device, additional information is required. In addition, according to 21 CFR 312.1(a)(2), 30 days must elapse between date of receipt by FDA of Form FD-1571 and use of the drug, unless the 30 day delay period is waived by FDA.

**3a. INVESTIGATIONAL NEW DRUG EXEMPTION (if more than one is involved, list others below under NOTES):**

SPONSOR NAME

DRUG NAME

DATE OF END OF 30-DAY EXPIRATION OR WAIVER

NUMBER ISSUED

**3b. INVESTIGATIONAL DEVICE EXEMPTION:**

SPONSOR NAME

DEVICE NAME

Unless notified otherwise by FDA, under 21 CFR 812.2(b) (ii) a sponsor is deemed to have an approved IDE if: (1) the IRB has agreed with the sponsor that the device is a nonsignificant risk device; and (2) the IRB has approved the study. (Check applicable box.)

☐ The IRB agrees with the sponsor that this device is a nonsignificant risk device.

OR

☐ The IDE application was submitted to FDA on (date) \_\_\_\_\_. Number issued \_\_\_\_\_.

NOTES

HHS 596 (Rev. 1/82) BACK

☆ U.S. GOVERNMENT PRINTING OFFICE: 1985-527-491/30482  
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Test Report

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Wednesday  
August 31, 1988

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**Part V**

**Department of  
Housing and Urban  
Development**

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**Office of the Assistant Secretary for  
Housing—Federal Housing Commissioner**

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**24 CFR Parts 232, 251, 252 and 255  
Full Insurance and Coinsurance of  
Mortgages Covering Nursing Homes and  
Similar Projects; Final Rule**



# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 232, 251, 252, and 255

[Docket No. R-88-1361; FR-2256]

## Full Insurance and Coinsurance of Mortgages Covering Nursing Homes and Similar Projects

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends 24 CFR Part 232 to implement HUD's statutory authority to insure the purchase or refinancing of existing nursing homes, intermediate care facilities and board and care homes. It also adds a new 24 CFR Part 252 to authorize a program of coinsurance for nursing homes, intermediate care facilities and board and care homes. Very generally, the new coinsurance program tracks the Part 232 full insurance program (including the new program provisions for the purchase or refinancing of existing projects). Where there are coinsurance provisions, they track as much as possible provisions in the coinsurance programs now applicable to multifamily housing projects, i.e., 24 CFR Parts 251 and 255, with some major differences including changes in the Sound Capital Resources requirements, the creation of a dedicated account for coinsurance obligations, and other changes, all of which are discussed in detail below. This rule also makes several conforming changes to 24 CFR Parts 251 and 255.

**EFFECTIVE DATE:** Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

**FOR FURTHER INFORMATION CONTACT:** James Hamernick, Director, Office of Insured Multifamily Housing Development, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410.

Telephone (202) 755-6500. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Section 307 of the Housing and Community Development Act of 1974 (Pub. L. 93-383) amended the National Housing Act by adding a new section 244 entitled, "Coinsurance." Section 244 authorizes the Secretary of Housing and Urban Development to insure, under any provision of Title II of the National Housing Act, any mortgage otherwise eligible under that title, pursuant to a Coinsurance Contract that provides that the lender (1) assume a percentage of any loss (and share in Mortgage Insurance Premium income) and (2) carry out (subject to audit and review requirements) such delegated processing functions as the Secretary approves.

The Department has previously undertaken a number of coinsurance initiatives under the section 244 authority and is currently operating three coinsurance programs. Regulations issued on February 12, 1976 (41 FR 6446) added a new Part 204 in Title 24 of the CFR that initiated a program of coinsurance for one-to-four family dwellings insured under section 203 of the National Housing Act. Regulations originally issued on July 2, 1980 (45 FR 45117) added a new Part 255 that authorized a program of "Coinsurance for the Purchase or Refinancing of Existing Multifamily Housing Projects." Part 255 permits qualified lending institutions to insure and perform delegated processing on mortgage loans on existing multifamily projects using sections 207 and 223(f) of the National Housing Act as the insuring authorities. It was extensively amended on March 31, 1982 (47 FR 13519), May 25, 1983 (48 FR 23399), and June 24, 1985 (50 FR 25924).

A new Part 251 was added on August 9, 1984 (49 FR 32023) as a companion to Part 255. It authorizes a program of coinsurance for newly constructed or substantially rehabilitated multifamily projects insured under section 221(d)(3) or section 221(d)(4) of the National Housing Act. Part 251, along with current Part 255, is available to HUD-approved private lenders and State Housing Agencies; both programs are in operation and very active.

The Department has moved forward in implementing multifamily coinsurance based on a general policy of delegating to participating FHA lenders those processing and underwriting functions that lenders are capable of performing in accordance with HUD criteria, but without HUD staff involvement. Based on the Department's successful experience with Parts 251 and 255, it is

now extending the coinsurance concept to another currently active multifamily full insurance program—Section 232 for nursing homes, intermediate care facilities and board and care homes.

The addition of this new Part 252 will result in a comprehensive HUD policy with respect to delegated processing. For the lender groups now eligible to insure section 223(f) and/or section 221(d) mortgages, it offers a coinsurance vehicle for also financing nursing homes and similar facilities now eligible only under section 232 full insurance. For the most part, this new Part 252 does not differ in substance from 24 CFR Part 232 (full insurance nursing homes). It has, however, been reorganized and rewritten to follow the format and "plain English" style of Parts 251 and 255 in order to emphasize the fact that all coinsurance programs share the same coinsurance policy framework, one in which lenders agree to share the insurance risk and in return are permitted to perform underwriting and servicing functions with minimal Federal involvement.

In this Part 252, the requirements concerning property eligibility, mortgage terms and cost limits, eligibility and regulation of mortgagors, insurance of advances, inspections and cost certification primarily track similar requirements found in the section 232 full insurance program. With respect to lender eligibility and contract rights, Part 252 draws upon the existing Parts 251 and 255 coinsurance provisions with some significant revisions which are discussed below. There are similar provisions with respect to authorization of full or partial reinsurance at the lender's option; acquisition and sale of properties by the lender (not HUD) after default—including claims settlement formula and risk share; restrictions on the assignment of insured mortgages to other lenders; lender obligation to bear a deductible of 5 percent of unpaid mortgage balance at default; and HUD guarantees to GNMA providing protection against coinsurance losses.

On December 31, 1987 a proposed rule was published in the Federal Register which would authorize under Part 232 the refinancing or purchase of existing presently HUD-insured nursing homes and related facilities and which would establish a new Part 252 authorizing the coinsurance of nursing homes and related facilities. This rule makes final—with significant modifications described below—that proposed rule.

A careful review of the public comments received on the December 31, 1987 proposed rule, as well as internal HUD reassessment of that proposal, has



resulted in a number of significant revisions to the original proposed rule. Among the revisions reflected in this final rule are:

(1) A requirement to establish a dedicated account, funded initially with at least \$500,000 of the initial \$1.5 million in liquid funds required for Sound Capital Resources. The account will be increased by a deposit at the time each case is closed in an amount of \$1 for each \$150 of principal indebtedness until the account reaches \$3 million. Thereafter, a deposit of \$1 for each \$300 in newly closed principal indebtedness will be required. In addition, an amount equivalent to four years of the lender's share of annual MIP must be deposited in the dedicated account.

(2) Individual mortgage limitations based on the lender's Sound Capital Resources will be imposed. A new § 252.110 has been added providing that mortgages may not exceed \$10 million per case until Sound Capital Resources reach \$2 million; \$15 million per case until Sound Capital Resources reach \$2.5 million; and \$20 million per case until Sound Capital Resources reach \$3 million. Once Sound Capital Resources reach \$3 million, there will be no specific limitations on mortgage amount.

(3) Under the existing coinsurance provisions, when a lender disposes of a project through a competitive bid procedure, the amount which may be deducted for purposes of calculating the insurance claims payment is the sales price of the property, even if this price is lower than the property's appraised value. This was revised in the proposed rule to base the deduction on the higher of the sales price or the appraised value as is now done in negotiated sale situations. This final rule does not follow the proposed rule but rather tracks the existing coinsurance provisions.

(4) Under the proposed rule, the current HUD claims settlement of 85 percent of loss (72.25 percent if the lender carries reinsurance at more than 50 percent or the maximum permitted by State law) would have been revised to provide HUD settlement at 75 percent of loss (or 62.25 percent for reinsurance). A corresponding change would have been made in the proposed rule to share mortgage insurance premiums on a basis of 70 percent to HUD and 30 percent to the Lender. This final rule maintains the current HUD claims settlement of 85 (72.25) percent of loss as well as the 80:20 MIP share ratio.

(5) The proposed rule would have allowed a mortgagor to refinance an existing property up to 70 percent of the lender's estimated value of the property

without cost justification. The final rule eliminates that criterion as a limiting factor.

#### Comparison of This Final Rule to Earlier Proposed Rule

This final rule consists of two parts. First, a new Subpart E is added to 24 CFR Part 232—Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, and Board and Care Homes—to implement HUD's authority to offer full insurance of purchases or refinancings covering currently insured projects under that part. Second, the rule establishes a new program of coinsurance of mortgages covering newly constructed, substantially rehabilitated or currently insured nursing homes, intermediate care facilities and board and care homes.

In addition, several conforming changes to Parts 251 and 255 have been included in this rulemaking.

#### New Subpart E to 24 CFR Part 232

This subpart consists of six sections. Section 232.901 states that notwithstanding the otherwise applicable requirement that mortgages insured under Part 232 cover only newly constructed or substantially rehabilitated Projects, a mortgage insured under this subpart may be executed in connection with the purchase or refinancing of presently insured Projects pursuant to section 223(f) of the National Housing Act. Section 232.902 describes what is meant by an existing Project and distinguishes such projects from those which are "substantially rehabilitated." Section 232.903 sets forth maximum insurable mortgage amounts. Section 232.904 sets a mortgage term of not less than 10 nor more than the lesser of 35 years or 75 percent of the estimated remaining economic life of the project. This requirement is similar to that in the existing multifamily coinsurance program (see § 255.205). Section 232.905 exempts mortgages insured under this new Subpart E from the otherwise applicable labor standards and prevailing wage requirements found in §§ 232.70-74. A similar provision is contained in Part 255 (see § 255.209). Section 232.906 sets forth processing and commitment procedures. It is based upon § 207.32(a) in title 24 of the CFR, which authorizes full FHA insurance for the purchase or refinancing of existing multifamily housing projects.

The provisions of this new Subpart E in the final rule are the same as those contained in the proposed rule with the significant exception that the final rule strikes the provision in § 232.903(e)(1) authorizing a refinancing mortgage

without cost justification of up to 70 percent of the Commissioner's estimate of the value of the project.

#### New Part 252 to Title 24 of the CFR

As was noted earlier in this Preamble, this new coinsurance program follows the existing full insurance nursing homes program and tracks existing coinsurance provisions found in 24 CFR Parts 251 and 255 with some significant coinsurance revisions. The revisions are limited to this new program. They relate mainly to the coinsuring lender's financial requirements and are described in detail below.

#### Subpart A—General Provisions

##### Section 252.1 Purpose and Scope

In the proposed rule, coinsurance provisions comparable to those in §§ 251.1 and 255.1 would apply under the new part. (No comparable Part 232 section.)

The final rule removes paragraph (c) referencing Section 244(c) of the National Housing Act. The Housing and Community Development Act of 1987 repealed section 244(c), therefore this rule deletes the referencing paragraph in this new Part 252.

##### Section 252.2 Coinsurance Contract

In the final rule, as in the proposed rule, provisions comparable to §§ 251.2 and 255.2 would apply under the new part. (No comparable Part 232 section.)

##### Section 252.3 Definitions

In the final rule, as in the proposed rule, the definitions in Part 251 of "Builder's and Sponsor's Profit and Risk Allowance", "Builder-seller Mortgagor", "Cooperative Mortgagor", "General Mortgagor", "Investor-sponsor Mortgagor", "Limited Distribution Mortgagor", and "Sponsor's Profit and Risk Allowance", contained in Parts 251 and 255 would not be used in this section.

The definitions in Parts 251 and 255 of "Coinsured Mortgage", "Distribution", "Firm Commitment", "Sound Capital Resources", and "Substantial Rehabilitation" are adopted for use in this section except that the \$6,500 per dwelling unit requirement for "substantial rehabilitation" is deleted as inapplicable to the types of projects covered in the new Part 252.

Definitions of "Nursing Home", "Intermediate Care Facility", "Board and Care Home", "Project", and "State" would be added in this section. They are essentially the same as the definitions used in the Part 232 full insurance program.



The final rule also adds to this section definitions of "Public mortgagor" and "Residual receipts". The latter had been omitted inadvertently from the proposed rule. "Public mortgagor" has been added to the final rule based on statutory changes in mortgagor eligibility made in the Housing and Community Development Act of 1987.

#### *Section 252.4 Effect of Amendments*

In the proposed rule, provisions comparable to §§ 251.4 and 255.4 would apply under the new part. [The comparable Part 232 section is § 232.96.]

Final rule makes no change in this provision.

#### **Subpart B—Lender Requirements**

##### *Section 252.101 Eligible Lender*

The proposed rule contained outdated provisions from §§ 251.101 and 255.101. (The comparable Part 232 section is 232.1(c).)

The final rule has been corrected to include provisions from the current §§ 251.101 and 255.101.

##### *Section 252.102 Review and Approval as Coinsuring Lender*

In the proposed rule, except for the Sound Capital Resources Requirement, provisions comparable to §§ 251.102 and 255.102 would apply to mortgagees approved as coinsuring lenders under the new part. (No comparable Part 232 section.)

Under the proposed rule, liquid assets of \$1,500,000 (rather than \$500,000 as in the 221(d) and 223(f) coinsurance programs) would have been required to meet the Sound Capital Resources requirement. Also, an additional one dollar in liquid assets would have been required for each \$200 (rather than \$300) in outstanding principal indebtedness of a lender's coinsured mortgages.

Under the final rule, liquid assets of \$1,500,000 will still be required to meet the Sound Capital Resources requirement. The lender must also establish and maintain a dedicated account for coinsurance obligations, funded initially with at least \$500,000 of the liquid funds. The lender must make deposits to and maintain the dedicated account at a level of an additional \$1 for each \$150 of newly closed principal indebtedness until the account reaches \$3 million and \$1 per \$300 thereafter. An amount equivalent to four years of the lender's share of annual MIP must also be deposited in the dedicated account. At the lender's option, the deposit may be made at closing or in increments within four years of closing. Potential sources for the additional deposit include the lender's share of annual

MIP, the lender's premium, or letters of credit converted to cash at the end of the four-year period. The dedicated account will be credited toward the lender's Sound Capital Resources requirement.

Withdrawals from the dedicated account will be restricted to purposes of meeting the lender's coinsurance obligations as specified in the program handbook.

Further, the final rule adds a paragraph similar to that contained in the corresponding sections in Parts 251 and 255 requiring HUD approval before any transfer of lender assets which would affect Sound Capital Resources.

Finally, the proposed rule would have required that technical staff experienced in the operation and management of the facilities covered under this Part 252, be in the direct employ of the lender. The final rule requires that the lender have in its own employ staff who have broad experience in the development/management/operation of residential healthcare facilities and who are able to analyze data on an individual project provided by technical experts (who may be under contract or in the employ of the lender).

##### *Section 252.103 Duration of Approval*

In the proposed rule, provisions comparable to §§ 251.103 and 255.103 would also apply to coinsuring lenders approved under the new part. (No comparable Part 232 section.)

No change in final rule.

##### *Section 252.104 Withdrawal of Approval*

In the proposed rule, provisions comparable to §§ 251.104 and 255.104 would apply to coinsuring lenders approved under the new part. No change in final rule. In addition, specific language regarding non-maintenance of the dedicated account for coinsurance obligations (§ 252.102(a)(3)) has been added to the final rule. Failure to properly maintain this account is added as a ground for withdrawal of lender approval, and increased deposit requirements as a potential condition of a lender's probation. (No comparable Part 232 section.)

##### *Section 252.105 Delegation of Servicing*

In the proposed rule, provisions comparable to §§ 251.105 and 255.105 would apply under the new rule. (No comparable Part 232 section.)

Final rule makes no change in this provision.

##### *Section 252.106 Assignment of and Participation in Coinsured Mortgages*

The proposed rule contained outdated provisions from §§ 251.106 and 255.106.

Final rule reflects minor changes from proposed to track verbatim revised §§ 251.106 and 255.106.

##### *Section 252.107 Reinsurance*

In the proposed rule, provisions comparable to §§ 251.107 and 255.107 would apply to coinsuring lenders approved under the new part. (No comparable Part 232 section.)

Final rule makes no change in this provision.

##### *Section 252.108 Pledging and Other Security Arrangements*

In the proposed rule, provisions comparable to §§ 251.108 and 255.108 would apply to coinsuring lenders approved under the new part. (No comparable Part 232 section but 232 does reference back to Part 207. See §§ 232.251 and 207.261.)

Final rule makes no change in this provision.

##### *Section 252.109 Minimum Principal Loan Amount*

Section 419 of the Housing and Community Development Act of 1987 prohibits a mortgagee or lender from requiring, as a condition of providing a loan insured under the NHA or secured by a mortgage insured under the NHA, that the principal amount of the loan exceed a minimum amount established by the mortgagee or lender. The provision also prohibits a mortgagee from requiring a minimum principal amount to be outstanding on the loan secured by the existing mortgage. The final rule adds this section implementing these statutory provisions.

##### *Section 252.110 Limitations on Individual Mortgage Amounts*

The final rule adds a provision not found in the proposed rule providing that mortgages may not exceed \$10 million per case until Sound Capital Resources reach \$2 million, \$15 million per case until Sound Capital Resources reach \$2.5 million, and \$20 million per case until Sound Capital Resources reach \$3 million. Once \$3 million is reached, there will be no specific limitations on the mortgage amount.

#### **Subpart C—Program Requirements**

##### *Section 252.201 Eligible Project*

In the proposed rule, paragraph (a) of this section generally would have tracked the existing § 232.39. However, the Department sought public comment



on alternative versions of subparagraph (a)(2) as it related to occupancy density requirements for board and care homes. Alternative A of the rule text would have provided for a maximum ratio of four persons per bedroom and per full bathroom in the facility. Alternative B would have offered this four-person per bedroom and per bathroom standard as a suggested norm, but it would only be the rule in those States where specific standards, as promulgated under section 1616(e) of the Social Security Act, did not exist. Where State standards were in place, Alternative B would defer to the State requirement.

Alternative A is contained in the final rule. This alternative conforms with the provision in Part 232 which governs the full insurance program. The full insurance provision was adopted in 1985 after considerable public comment, and given the limited public comment to the alternatives presented in the proposed rule (2 in support of Alternative B and 1 in support of a more restrictive Alternative A), we do not feel it is appropriate to change the outstanding policy as contained in Part 232. This will provide a uniform underwriting base for all HUD-insured and coinsured board and care homes.

The occupancy density and facility-type standards established by States and localities, by a large, address health and safety concerns. They vary widely from State to State, and from locality to locality (each State may designate one or more State or local authorities which can establish and enforce standards). The requirements tend to be more restrictive in many jurisdictions than those in Alternative A. While the Department equally shares the concern for human safety, our standards must also address the property as security for a coinsured mortgage. Therefore, we have decided to retain the one-to-four person per bedroom occupancy and to set the maximum ratio of four persons to every full bath. The facility must also adhere to State and local occupancy requirements if a stricter degree of regulation is required under State or local law.

(b) Provisions comparable to §§ 251.201(b) and 255.201(b) would apply to mortgages coinsured under the new part. (No comparable Part 232 section.) The final rule makes no change in this paragraph.

(c) Provisions comparable to §§ 251.201(c) and 255.201(c) would apply to mortgages coinsured under the new part. (No comparable Part 232 section.) The final rule makes no change in this paragraph.

(d) Provisions comparable to §§ 251.201(d) and 255.201(d) would

apply to mortgages coinsured under the new part. (No comparable Part 232 section.) The final rule makes no change in this paragraph.

(e) Provisions comparable to §§ 251.201(e) and 255.201(e) would apply to mortgages coinsured under the new part. (No comparable Part 232 section.) The final rule makes no change in this paragraph.

#### *Section 252.202 Eligible Mortgagors*

In the proposed rule, this section tracked the existing § 232.20.

The word "public" is added to this section in the final rule based on statutory changes imposed by the HCD Act of 1987 expanding mortgagor eligibility under the nursing home program to "public mortgagors".

#### *Section 252.203 Maximum Mortgage Limitations*

In the proposed rule, the mortgage is limited to a principal obligation not in excess of 90 percent of the lender's estimate of the value of the property or project, including equipment to be used in its operation, when the proposed improvements are completed and the equipment is installed. (This section is based upon § 232.30.)

The final rule retains the 90 percent of value wording and also includes the specific provisions in § 255.203 (b) and (c) regarding Value and Debt Service Limits. Additional limits imposed on rehabilitation projects track those in § 232.32 although the wording has been changed to the plain English style of Parts 251 and 255.

#### *Section 252.204 Maximum Interest Rate*

In the proposed rule, provisions comparable to §§ 251.204 and 255.204 would apply to mortgages coinsured under the new part. (The comparable Part 232 section is 232.29.)

The final rule makes no change in this section.

#### *Section 252.205 Term of the Mortgage*

In the proposed rule, provisions comparable to §§ 251.205 and 255.205 would apply to mortgages coinsured under the new part. (The comparable Part 232 section is 232.27.)

The final rule makes no substantive change in this section.

#### *Section 252.206 Lenders Fees and Premiums*

In the proposed rule, provisions comparable to §§ 251.206 and 255.206 would apply to mortgages coinsured under the new part. (The comparable Part 232 sections are 232.10 and 232.12.)

The final rule makes no change in this section.

#### *Section 252.207 Coinsurance of Mortgages in Lender's Portfolio*

In the proposed rule, generally, the provisions of §§ 251.207 and 255.207 would apply to mortgages coinsured under the new part. The only difference is that mortgages in which no equity is removed would not be subject to the one fourth limitation of paragraph (a)(2).

The final rule makes no change in this section.

#### *Section 252.208 Nondiscrimination in Occupant Eligibility and Employment*

In the proposed rule, paragraphs (a), (b) and (c) of this section would be based upon § 232.34. Paragraphs (d), (e) and (f) would be based upon §§ 251.208(c), (d) and (e) and 255.208 (c), (d) and (e).

The final rule adds a paragraph requiring the mortgagor to certify it will not sell the project as long as the mortgage is coinsured unless the purchaser agrees to comply with the requirements of this Part 252. (Based on §§ 251.208(g) and 255.208(g).)

#### *Section 252.209 Labor Standards and Prevailing Wage Requirements*

In the proposed rule, with the exception of mortgages coinsured under Subpart J, the provisions of § 251.209 would be applicable to mortgages coinsured under the new part. (The comparable Part 232 sections are 232.70 through 232.74.)

The final rule makes no change in this section.

### **Subpart D—Processing and Commitment**

#### *Section 252.301 Processing and Development Responsibilities*

In the proposed rule, provisions comparable to §§ 251.301 and 255.301 would be applicable to mortgages coinsured under the new part. (No comparable Part 232 section.)

The final rule adds two provisions making the FHA Commissioner responsible for a market/submarket impact analysis of the proposed project and making the lender responsible for initiating the intergovernmental review process in certain cases.

#### *Section 252.302 Processing and Commitment*

In the proposed rule, provisions comparable to §§ 251.302 and 255.302 would be applicable to mortgages coinsured under the new part. (No comparable Part 232 section.)

The final rule makes no change in this section.



**Section 252.303 Required Certificates**

The proposed rule added a section to the basic Part 251 structure based upon the current § 232.6. It set forth the State certification requirements contained in Part 232.

Section 410 of the Housing and Community Development Act of 1987 revised the State certification requirements for nursing homes and related facilities. The final rule reflects these new statutory provisions.

**Subpart E—Insurance of Advances; Insurance Upon Completion; Construction Period****Section 252.401 Insurance of Advances or Insurance Upon Completion; Applicability of Requirements**

In the proposed rule, provisions comparable to §§ 251.401 and 255.401 would apply to mortgages coinsured under the new part. (No comparable Part 232 section.)

The final rule makes no change in this section.

**Section 252.402 Insurance of Advances**

In the proposed rule, provisions comparable to §§ 251.402 and 255.402 would apply to mortgages coinsured under the new part. (The comparable Part 232 provision for paragraph (a) of this section is § 232.61; for paragraph (b) of this section it is § 232.55; for paragraph (c) it is § 232.57; and for paragraph (d) it is § 232.56.)

The final rule makes no substantive changes in this section.

**Section 252.403 Insurance Upon Completion**

In the proposed rule, provisions comparable to §§ 251.403 and 255.403 would apply to mortgages coinsured under the new part. (The closest comparable Part 232 provision is § 232.50(a)(3).)

The final rule makes no change in this section.

**Section 252.404 Requirements Applicable to Both Insurance of Advances and Insurance Upon Completion Cases**

In the proposed rule, provisions comparable to §§ 251.404 and 255.404 would apply to mortgages coinsured under the new part. Comparable Part 232 provisions for each paragraph of this section are as follows:

- (a)—§ 232.56 is closest comparable,
- (b)—no comparable provision, (c)(1)—§ 232.80, (c)(2)—§ 232.80, (c)(3)—§ 232.82, (c)(4)—§ 232.83, (d)(1)—§ 232.85(a), (d)(2)—§ 232.84, § 232.85, (e)—§ 232.85, (f)—§ 232.86, (g)—§ 232.87, (h)—§ 232.91, (i)—§ 232.92.

The final rule makes no substantive change in this section.

**Section 252.405 Lender Review of Mortgage Amount**

In the proposed rule, provisions comparable to §§ 251.405 and 255.405 would apply to mortgages coinsured under the new part. (Closest comparable Part 232 provision is § 232.89.)

The final rule makes no change in this section.

**Section 252.406 Application of Net Income Received Before Beginning of Amortization**

In the proposed rule, provisions comparable to §§ 251.406 and 255.406 would apply to mortgages coinsured under the new part. (Comparable Part 232 provision is § 232.62.)

The final rule makes a technical correction changing the word "Commissioner" to "lender" regarding the determination of the application of net income prior to the beginning of amortization.

**Section 252.407 Endorsement by Commissioner**

In the proposed rule, provisions comparable to §§ 251.407 and 255.407 would apply to mortgages coinsured under the new part. (No comparable Part 232 provision.)

The final rule makes no change in this section.

**Subpart F—Mortgage and Closing Requirements****Section 252.501 Mortgage Requirements—Real Estate**

In the proposed rule, provisions comparable to §§ 251.501 and 255.501 would apply. (Comparable Part 232 section is § 232.25a.)

The final rule makes no substantive change in this section.

**Section 252.502 Title**

In the proposed rule, provisions comparable to §§ 251.502 and 255.502 would apply. (Comparable Part 232 sections are §§ 232.595 and 232.600.)

The final rule makes no substantive change in this section.

**Section 252.503 Mortgage Provisions**

In the proposed rule, except for paragraphs (i), (j) and (k), provisions comparable to §§ 251.503 and 255.503 would apply. The new paragraph 503(i) was based upon § 232.37 and related to prepayment privileges and prepayment charges for the various categories of projects covered in the new part, and allowed a prepayment lock-out and penalty as agreed upon between the mortgagor and the coinsuring lender

consistent with HUD requirements. This differs from § 232.37 where the mortgagor may prepay up to 15 percent in any calendar year without penalty. Paragraph (j) relating to late charges, was the same as § 232.38a. Paragraph (k), on retaining property for residential purposes, was deleted.

In the final rule, paragraph (j) relating to late charges was revised to track the provisions found in §§ 251.503(j) and 255.503(j). Also, paragraph (k) is inserted, similar to Parts 251 and 255, prohibiting use of the project for any purpose other than as a residential care facility eligible under this Part.

**Section 252.504 Mortgage Lien and Other Obligations**

In the proposed rule, this section was based upon § 232.26.

The final rule is similar except it has been modified to conform with § 251.504.

**Section 252.505 Regulatory Agreement**

In the proposed rule, provisions comparable to §§ 251.505 and 255.505 would apply. (Comparable Part 232 provision is § 232.45.)

The final rule makes no change in this section.

**Section 252.506 Other Closing Documents**

In the proposed rule, provisions comparable to §§ 251.506 and 255.506 would apply. (No comparable Part 232 provision.)

The final rule makes no change in this section.

**Subpart G—Requirements Relating to Structure of Mortgagor Entity and Transfers of Ownership Interest****Section 252.601 Requirements Applicable to all Projects**

In the proposed rule, provisions comparable to §§ 251.601 and 255.601 would apply. (Closest comparable Part 232 sections are §§ 232.20 and 232.13a.)

The final rule makes no change in this section.

**Subpart H—Program Requirements Relating to Project Operation**

Part 232 is silent concerning the various operating requirements set forth in Subpart H of our current coinsurance programs except for a general grant of regulatory authority provided the Commissioner in § 232.45. With respect to this new coinsurance program, the following express operating requirements found in Parts 251 and 255 will apply.



**Section 252.701 General**

In the proposed rule, provisions comparable to §§ 251.701 and 255.701 would apply to mortgages coinsured under the new part.

The final rule makes no change in this section.

**Section 252.702 Reserve for Replacements and General Operating Reserve**

(a) In the proposed rule, provisions comparable to paragraph (a) of §§ 251.702 and 255.702 would apply to mortgages coinsured under the new part.

The final rule inserts a requirement to include funds for the repair and replacement of major movable equipment in the reserve for replacements, but is otherwise unchanged.

(b) This paragraph remains reserved in the final rule.

(c) In the proposed rule, provisions comparable to paragraph (c) of §§ 251.702 and 255.702 would apply to mortgages coinsured under the new part. (No comparable Part 232 provision.) The final rule makes no substantive change in this paragraph.

**Section 252.703 Charges for Facilities and Services**

In the proposed rule, the mortgagor would determine charges taking into account facilities and services offered by the Project.

The final rule retains that provision and adds a new provision prohibiting the collection of admission, founder, life-care or similar fees or payments. This prohibition has been a long-standing administrative policy and is consistent with the similar prohibition at § 251.703.

**Section 252.704 Use of Project Funds**

In the proposed rule, provisions comparable to §§ 251.704 and 255.704 would apply to mortgages coinsured under the new part.

The final rule makes no change in this section.

**Section 252.705 Distribution and Residual Receipts**

(a) In the proposed rule, provisions comparable to paragraph (a) of §§ 251.705 and 255.705 would apply to mortgages coinsured under the new part.

(b) In the proposed rule, provisions comparable to paragraph (b) of §§ 251.705 and 255.705 would apply to mortgages coinsured under the new part.

(c) [Reserved]

(d) [Reserved]

(e) In the proposed rule, provisions comparable to paragraph (e) of §§ 251.705 and 255.705 would apply to mortgages coinsured under the new part.

(f) In the proposed rule, provisions comparable to paragraph (f) of §§ 251.705 and 255.705 would apply to mortgages coinsured under the new part.

(g) In the proposed rule, provisions comparable to paragraph (g) of §§ 251.705 and 255.705 would apply to mortgages coinsured under the new part.

The final rule adds a paragraph (c) prohibiting distributions on projects owned by nonprofit or public mortgagors and reorganizes the section.

**Section 252.706 Project Management**

(a) In the proposed rule, provisions comparable to paragraphs (a) through (i) of §§ 251.706 and 255.706 would apply to mortgages coinsured under the new part. The remaining paragraphs of that section would not apply.

The final rule makes no substantive change in this section.

**Subpart I—Contract Rights and Obligations**

In Part 232, the subject matter of Subpart I is covered by a reference back to a similar subpart in Part 207. In developing the Part 251 and 255 coinsurance programs, the Department considered what modifications in "Contract Rights and Obligations" as found in Part 207, would be needed for coinsurance and promulgated them as a Subpart I in both parts. In the proposed version of this new Part 252, the Department incorporated the existing coinsurance Subpart I with the following major exceptions.

(1) The coinsurance share ratios found in §§ 251.820 and 255.820 (85 percent of loss—72.25 percent if the lender carries the maximum allowable reinsurance) were changed to a basic 75 percent of loss ratio. With reinsurance the new ratio would have been 62.25 percent (see new § 252.820).

(2) The provisions in §§ 251.822(f) (1) and (2) and 255.822(f) (1) and (2), relating to amounts deductible where the lender must dispose of the project, were changed to require a deduction equal to the higher of the sales price or the appraised value of the property in every case (see new § 252.822(f)).

(3) Insurance benefits would be paid in cash unless the lender files a written request for payment in debentures (see § 252.819).

In the final rule, items (1) and (2) above are changed. Instead of the proposed rule items, the analogous provisions found in Parts 251 and 255 are adopted. The mortgage insurance premium split is also revised in the final rule to conform to Parts 251 and 255.

**Subpart J—Coinsurance of Mortgages Covering Existing Projects**

In the proposed rule, this subpart consisted of six sections similar in sequence and substance to those found in the new Subpart E to 24 CFR Part 232 which was described above.

The final rule strikes the provision in § 252.903(c)(1) authorizing a refinancing mortgage without cost justification of up to 70 percent of the lender's estimate of value of the project.

**Public Comments**

A total of 18 public comments were received on this rule. Twelve were from private businesses or corporations, five from national trade associations or organizations, and one from a public entity. The comments raised the following issues.

1. *Coininsurance Risk Sharing Ratio*—The proposed rule set forth a change in the risk sharing ratio from the 85:15 formula under the 221(d) and 223(f) Coinsurance programs to a 75:25 ratio under this Part. This was done not because the likelihood of default might be greater in this program, but rather that the relative loss on a healthcare facility might be greater than a housing project due to its limited reuse potential should a default occur.

Six commenters strongly urged that the 75–25 percent coinsurance loss sharing ratio contained in the proposed rule be changed to an 85–15 ratio—the same as that which applies in the Part 251 and 255 multifamily rental coinsurance programs. They argued that the substantial financial exposure of the first 5% of the outstanding mortgage balance plus 15% of any loss to the coinsurer is sufficient to assure that coinsurers will properly underwrite the project. They feel the current risk-sharing formula is fair and any increase would be unwarranted.

The commenters also pointed to the inconsistency among the coinsurance programs. It was felt also that this increase in liability on the part of the coinsurer would discourage participation by the larger, more highly capitalized lenders based on a perceived increased likelihood of default.

Many commenters cited historically lower rates of default in the fully insured nursing home program and the increasing elderly population as good reasons for retaining the current 85:15 ratio which they consider incentive enough for prudent underwriting.

Two commenters stated that their members have no experience to indicate that healthcare facilities are more difficult to dispose of, or have a lesser



resale value, in the event of default. In fact, one contends that there is a very strong market among nonprofit and proprietary healthcare chains for the acquisition of existing facilities.

The Department believes that with the addition of further mortgage limitations (§ 252.903(c)(1)) and increased lender Sound Capital Resources requirements (§ 252.102) in this final rule, the risk share can be maintained at the 85:15 ratio urged by the commenters. This will, of course, result in consistency with the Part 251 and 255 Coinsurance programs. The final rule therefore provides for an 85:15 risk share ratio and the corresponding 80:20 MIP split of Parts 251 and 255.

**2. Section 233(f) Coinsurance and Full Insurance Should Not Be Limited To Previously Insured Projects.**—Nine commenters, while approving the provisions in the proposed rule authorizing FHA insurance or coinsurance for the purchase or refinancing of existing, HUD-insured nursing homes and similar facilities, strongly urged that this authority be expanded to also cover existing uninsured projects.

All of the commenters who provided comments on this issue indicated that allowing purchase/refinancing of previously uninsured facilities under this program would not increase the Department's risk.

Most respondents indicated that uninsured existing facilities with proven "track records" would provide a sound, low-risk portfolio for the lender which would increase capitalization and improve the lender's ability to sustain projects in default.

The coinsurance programs under both Parts 251 and 255 were patterned on full insurance programs which had been operating for some time. The Department does not have experience in the full insurance program with the purchase and refinance of existing healthcare facilities. We feel that some experience is necessary before we expand this program beyond the scope of previously insured facilities. Therefore, the expansion of the program to uninsured projects shall not occur at this time.

In addition, we believe there is a need for more restrictive mortgage limitations on existing project refinancings to eliminate equity take-out.

One argument (reiterated by several commenters) for expansion of HUD's residential care programs into the purchase/refinancing of existing projects has been that many facilities are substantially supported through Medicare/Medicaid payments. By allowing refinancing of existing facilities

to reduce interest rates (thereby lowering debt service), Federal dollars would be saved through lowered Medicare/Medicaid reimbursement-based payments.

However, HUD's experience has been that, where equity take-out is allowed, HUD's share of the coinsurance risk will likely be greater than its current exposure under full insurance on the same project as equity take-out creates a major upward force on mortgage amounts. So not only is the Department's exposure actually increased, the Medicare/Medicaid payments which are based in part on the pass-through of debt service are increased also.

By eliminating the mortgage criterion which allows for equity take-out in the refinancing of existing projects, as is done in this final rule, HUD will focus the coinsurance program on lowering financing costs (and Federal expenditures) while supporting needed repairs and rehabilitation. This is consistent with substantial rehabilitation mortgage limitations which do not allow equity take-out.

HUD, therefore, is revising the final rule so that only currently insured existing projects will be eligible for refinancing and purchase with the maximum mortgage amount limited to the lower of value (85%), debt service (85%), and cost to refinance (100%) or cost to acquire (85%).

### 3. Technical Staff Requirement.

Thirteen commenters objected to the provision in the rule requiring a lender to have in its own employ technical staff who are experienced in the operation/management and governmental requirements relating to nursing homes and similar facilities and urged that the lender be allowed to obtain such technical expertise on a contract basis.

Of the thirteen, twelve strongly supported the position of contracting for technical expertise in healthcare delivery, with in-house staff having broad experience in the field with the ability to review, analyze and evaluate data provided by the technical experts.

Several commenters indicated that there are a limited number of individuals with the technical skills and knowledge required, and that program implementation could be delayed by lenders competing for these limited resources. In addition, the Mortgage Bankers Association commented that there may be some reluctance among these experts to go from the healthcare industry to the banking/real estate industry on a full-time basis. The Healthcare Financing Study Group indicated that the non-FHA financiers

typically rely on contract personnel for technical input in this area.

Many commenters pointed out that HUD does not have in-house technical expertise to analyze fully insured facilities. Furthermore, the coinsurance programs allow for contract personnel in other areas requiring technical expertise (e.g., management analysis, architectural) and they could see no difference in principle here. Because certification, licensing and reimbursement practices vary so widely among States, it is also unlikely that any one or two individuals would be familiar with all areas in which a lender may do business.

The Department believes these comments have some validity. It also believes, however, that a coinsurer must have at least one individual in its own employ who has a strong background in the development, management and operation of the various types of residential healthcare facilities and who can analyze and evaluate various technical inputs such as certifications, reimbursement schedules, market analyses, operational reviews, etc. to determine project feasibility.

Technical experts may be contracted on a retainer basis or for an individual project, but must be familiar with certification and licensing requirements, reimbursement procedures, reasonable and customary charges and all other aspects of healthcare delivery for the locality of the project. The final rule reflects this policy.

**4. Mortgage Insurance Premium Split (§ 252.801).**—Six commenters questioned the validity of a change to a mortgage insurance premium split of 70% to HUD and 30% to the coinsurer. They did not believe it to be adequate or equitable in light of the increased risk sharing ratio being imposed under the proposed regulation. They urged the Department to maintain current coinsurance program requirements thereby lending consistency to, and a sense of confidence in, the programs.

As noted above, this final rule establishes a risk sharing ratio of 85:15, the same as that provided in the other coinsurance programs. In light of this change from the proposed rule, the mortgage insurance premium split is also retained at an 80:20 ratio (which takes into account the lender's responsibility for the first 5 percent of the loss).

**5. Seventy percent loan to value ratio on refinancing.**—One commenter recommended deletion of § 232.903(c) of the proposed rule. The commenter states: "there is no reason to maintain a 70% loan to value on a refinance. The 85% loan to value should be kept for all



situations. The 70% rule under section 223(f) was meant to be a test for three to five years and then change to 85%. Keeping the 70% figure tends to encourage higher appraisals so that the actual mortgage is closer to 85% of a more realistic value. It would be better to mandate accurate appraisals and have 85% of value for all transactions."

Item number 2, above, explains HUD's policy with respect to mortgage limits to refinancings. The final rule eliminates the 70% of value test for refinancing existing facilities under this part.

6. *Disposition of a Project.*—Under the current coinsurance programs, when a lender disposes of a project through a competitive bid procedure, the amount which may be deducted for the claim payment computation is the sales price. Under the proposed nursing home regulation (§ 252.822), a deduction would be made from the claim payment consisting of the higher of the proceeds from the sale of the project or the appraised value of the project.

Nine commenters took exception to this change from the current coinsurance programs. They argue that a competitive bid sales price is clearly the most accurate measure of the value of the property because it evidences the willingness of a buyer to acquire a property whereas use of an appraisal is much more "subjective" and likely to be out of date in a very short period of time.

In light of other changes made from the proposed rule in this final rule—i.e., increased Sound Capital Resources requirements, mortgage limitations—we believe the position of the commenters is reasonable. As in the existing coinsurance programs, this final rule provides that the amount which may be deducted for a claim payment computation in a competitive bid situation is the sales price.

7. *Sound Capital Resources* (§ 252.102).—Three commenters opposed the proposed rule's requirement that liquid assets of \$1,500,000 (rather than \$500,000) would be needed to meet the Sound Capital Resources requirement. They argue that this increase will have a negative impact in attracting highly qualified participants to the nursing home coinsurance program.

One commenter had no objection to the increased liquidity requirement for sound capital resources, but did find the logic stated in the Preamble's "Description of Proposed Rule" to be faulty. "Inasmuch as HUD permits the addition of loan loss reserves to stated net worth in the determination of a coinsurer's sound capital resources, the establishment of loan loss reserves by the coinsurer does not necessarily

indicate that the coinsurer believes that the loan risk is greater than HUD. It may reflect the coinsurer's business policy, tax considerations or other matters, particularly with the new tax treatment of loss reserves." The commenter did believe, however, that coinsured nursing home lending is somewhat riskier than other coinsurance programs primarily because of the service business nature of eligible projects and the regulatory oversight by agencies other than HUD."

The final rule retains the \$1.5 million net worth requirement, all of which must be liquid. In addition, it requires that a dedicated account be established—initially with \$500,000 of the liquidity requirement, and with additional deposits as cases are closed and based on the lender's share of annual MIP for four years of a project's mortgage term. Further, individual mortgage amounts will be limited by Sound Capital Resources level (toward which the dedicated account will be credited) until a \$3 million level is reached.

Our goal regarding all financial requirements is to ensure that in the event of a default, there are funds available to cover the lender's obligations; otherwise, the Department may be faced with being liable for the whole loss through the GNMA mortgage-backed securities program. Only adequately funded dedicated reserves can ensure this.

Therefore, as mentioned above, the final rule will require that \$500,000 of the initial \$1.5 million in liquid funds be placed in a dedicated account. Additions to the account will be funded from a deposit at the time each case is closed. The amount of the deposit at closing will slide from \$1 for each \$150 of mortgage amount until the account reaches a balance of \$3 million to \$1 per \$300 (the present 221(d)/223(f) ratio) thereafter. All funds in this dedicated account will be credited toward the lender's Sound Capital Resources requirement.

Withdrawals from the dedicated account could only be made for the purpose of meeting the lender's coinsurance obligations, including claims, GNMA pass-throughs and certain other expenditures (but not payment of MIP or similar full insurance charges), as specified by HUD in the program handbook. HUD may develop standards, based upon actuarial experience, for reducing dedicated account requirements. Such standards would be implemented by notice published in the Federal Register.

We also concur with the concept of mortgage limitations based on Sound Capital Resources levels and include in the final rule the following schedule

proposed by the Healthcare Financing Study Group.

(1) Mortgages may not exceed \$10 million per case until \$2.0 million in Sound Capital Resources is established;

(2) Mortgages may not exceed \$15 million per case until \$2.5 million is attained;

(3) Mortgages may not exceed \$20 million per case until \$3 million is attained; and

(4) Limit mortgages only by prudent underwriting after \$3 million in Sound Capital Resources is attained.

These changes are intended to strengthen the financial ability of coinsuring lenders to meet their program responsibilities, particularly their share of possible coinsurance losses.

8. *Labor Standard and Prevailing Wage Requirements.* Three commenters noted that the Department of Labor (DOL) is responsible for the final determination of a project's prevailing wage rates. They strongly urged HUD to discuss at great length with DOL the nursing home program description, intent and effect in order to ensure that DOL understands how nursing homes are intended to facilitate the living accommodations of elderly and handicapped persons.

We request the Department's consideration to utilize multifamily residential rates rather than commercial prevailing wage rates for nursing homes and related facilities after negotiations with the Department of Labor. The lower residential rate would greatly reduce the overall construction costs of a project. It would assist greatly in delivering these types of facilities to house the nation's increasing elderly population and, at the same time, reduce any risk to the insurance fund.

The Department acknowledges the differences in prevailing wage rates and their significant impact on the economic feasibility of some projects. In those instances where it is possible to achieve a residential wage rate determination, this approach will be highlighted with the Department of Labor.

9. *Substantial Rehabilitation of Nursing Homes.*—One commenter asked that the maximum mortgage limitations relating to substantial rehabilitation in Part 252 parallel the 251 coinsurance program (§ 251.203(d)) for refinancing of substantial rehabilitation projects. It argued that this revision to the regulation in determining the maximum mortgage amount will facilitate the use of the substantial rehabilitation portion of the program and encourage existing projects to apply for the 232 coinsurance program relieving FHA of existing nursing home projects in their portfolio.



The Part 252 substantial rehabilitation mortgage limitations test is based on the section 232 full insurance program. The terms and conditions for full insurance and for coinsurance must remain substantially similar.

10. *Inclusion of the 1987 Housing Provisions*—Five commenters requested that HUD include in the rule the provisions contained in section 410 of the Housing and Community Act of 1987 relating to the inclusion of public mortgagors as eligible mortgage entities and new provisions regarding State Approval requirements.

Changes made in section 410 of the Housing and Community Development Act of 1987 are included in the final rule.

11. *Co-insurance*—Two commenters noted that from the inception of the Housing coinsurance programs, there has been a concern with the inability of coinsurers to locate companies with an interest in reinsuring the lender's coinsurance risk. They proposed that the Department consider a "co-coinsurance" program by which an approved coinsurer could jointly participate with other approved coinsurers on a specific insured loan. Such participations would not be considered "reinsurance" for purposes of changing the risk sharing ratios. Coinsurance participation would be a function of the joint capitalization of the participants. They argue that permitting joint insured loans would enhance program quality and reduce the likelihood of a financial default by coinsurers to GNMA or FHA.

Co-insurance can be accomplished now through the approved sale of insured servicing to another coinsurer, however the originating lender must meet all Sound Capital Resources requirements to close a loan.

12. *Reinsurance*—One commenter noted that the reinsurance provisions under the regulations are generally ineffective because they do not match the economic incentives reflected elsewhere in the regulations. It argued that reasons to reinsure would be:

(a) To substitute insurer reserves for cash reserves held by the lender; and

(b) To increase the capital strength of the lender (the equivalent of Sound Capital Resources).

The commenter went on to state that both of these purposes would benefit HUD. However, as the regulations now read, reinsurance is neither recognized as an offset to the required reserves nor to Sound Capital Resources. In addition, the establishment of reinsurance has a direct and substantial impact on the lender by increasing its loss exposure.

The commenter believes it would be appropriate to consider economic incentives which will encourage lenders

to reinsure a portion of their risk. The alternatives are:

(a) Provide a credit against the Sound Capital Resources and/or liquid assets provided that the reinsurer qualifies as to assets or claims paying capacity in a manner similar to the definition of "a supervised financial institution with assets of not less than \$100,000,000"; and

(b) Eliminate the reduction from HUD's portion of the loss or increase the allocation of premium to the lender; if the reinsurer will make HUD, GNMA, and the holder of the HUD insured mortgage, a direct beneficiary of the reinsurance.

The final rule remains unchanged regarding reinsurance. The optional 25 basis points remain available to the lender to purchase reinsurance should it so desire. Because of increasing the liquidity in Sound Capital Resources, as well as the establishment of the dedicated account, we do not feel that additional incentives to purchase reinsurance are necessary at this time. The final rule conforms to Parts 251 and 255 on reinsurance.

13. *Proposal for Interim Settlement of Insurance Benefits*—Two commenters asserted that after default, but prior to receipt of insurance benefits, the coinsuring lender must continue to make payments on the GNMA or other securities issued to fund the insured loan and cover necessary expenses to maintain and preserve projects. They point out that this period may be as long as several years and only at its conclusion is the coinsurer reimbursed for the Department's share of costs.

This result, it is argued, creates a severe capital drain and jeopardizes the coinsurer's economic survival. "It would seem that as the Federal Government already guarantees the payment of the GNMA securities used to finance the loan in the event of a lender default on such securities, and as it appears in no one's interest to drain the coinsurer's capital during the default period (only to reimburse it thereafter) that HUD should consider an interim settlement program. One basis for such settlement would be to pay the coinsurer at the commencement of foreclosure proceedings, no less than quarterly, a sum which would provide the coinsurer with an estimated portion of the insurance benefits that it will ultimately receive. Such amounts would then be used to service the GNMA securities or otherwise be applied to project preservation. To the extent that the Department is concerned with an overpayment of benefits, the interim settlement can be limited to a percentage of the debt service on the GNMA securities or other reasonable

standard. Nevertheless, any proposal that would reduce the stress on a coinsurer's capital during the default period would significantly reduce the likelihood of financial defaults by coinsurers."

In response to this concern the Department has prepared a coinsuring lender letter that will announce an interim settlement procedure for claims in each of the coinsurance programs.

14. *Three Year Requirement for Refinancing (§ 232.902)*. One commenter stated that the requirement that three years have elapsed from the date of completion of construction or substantial rehabilitation of the project to the date of refinancing is acceptable as a general rule, but there should be room for some exceptions.

Reasons to include exceptions to the three year limit involve individual or unusual circumstances. For example, an insured facility may have been recently substantially rehabilitated and managed by a single owner who becomes incapacitated or dies prior to the three year limit. In this case, the facility may be for sale but disadvantaged in the market because of the arbitrary prohibition on the HUD 232 insurance refinancing.

Another reason to remove the three year period is the fluctuating interest rate. The three year restriction may impede a facility's ability to take advantage of the best and most timely opportunity to refinance and thereby lower costs.

The three-year rule should not prevent any project from refinancing in a declining interest rate market. The section 223(a)(7) program is available without a three-year restriction.

15. *Integrate Board and Care and Nursing Beds*. One commenter urged HUD to allow facilities to integrate board and care beds with nursing beds. It argues that this allows couples to share rooms and receive the appropriate level of care. SNF and ICF beds should be allowed to be integrated for the same reasons. The commenter notes that at least one state, New Jersey, requires new nursing homes to include board and care homes.

The same commenter objects to the maximum ratio in the rule of four persons per full bathroom (§ 252.201(a)). It says many state regulations do not require "residents to full bathroom" ratios. In these states, some facilities have been constructed with a greater person to full bath ratio. Other facilities have sink, toilet, and shower or tub facilities in separate locations and therefore do not have "full baths".



The final rule does not preclude a combination of the various facilities within the same project. It does, however, prohibit the integration of board and care with the nursing home or intermediate care facility beds. Nursing home and intermediate care beds may be integrated but must be clearly designated and identified.

The major reason for requiring a separation in these facilities is the difference in the services and level of care provided to and required by the residents. Staffing and skill levels necessary to operate the facilities certainly vary widely between board and care and the other types. In addition, certification requirements differ among the various types of facilities and monitoring and inspection would be difficult, if not impossible, if all levels of care were integrated.

**16. Liberalize Portfolio Coinsurance.**—One commenter objects to the provision in § 252.207 of the rule limiting the refinancing of a lender's portfolio loans to no more than one fourth of the total number of loans the lender presents for endorsement for coinsurance during any 12-month period. It argues that the demand for refinancing increases as interest rates fall. Limiting refinancing of loans to twenty five percent may unnecessarily restrict the coinsurance available during low interest times.

Portfolio coinsurance currently excepts cases insured by HUD under full insurance programs, where the lender's sole involvement is servicing and in which no equity is being removed. The Department feels that no additional flexibility is needed at this time.

**17. Operating Loss Loans.**—Two commenters strongly urged that the rule provide for operating loss loans in connection with newly constructed or substantially rehabilitated projects.

Operating loss loans are not being considered for coinsurance at this time.

**18. Permit Deed-in-Lieu of Foreclosure at Closing.**—One commenter noted that § 252.817(a) of the rule effectively prohibits the coinsurer from obtaining a deed-in-lieu of foreclosure at initial endorsement. It strongly suggests that this provision be modified. "As the proposed rule would seem to indicate, the Department is concerned with the difficulties in operating and selling nursing home projects after foreclosure. In order to reduce the time frame of the foreclosure period, particularly because of the difficulties anticipated in managing a defaulted Nursing Home occupied by elderly and other chronically ill patients, it would be advisable to obtain deeds-in-lieu of foreclosure at closing where permitted

by state law. At a minimum, HUD's required Regulatory Agreement should permit the inclusion of procedures by which a lender in the event of default can immediately obtain the facility operating license and obtain other rights necessary to operate the project during this period. This will be an important right in the event of default because of the unique operating features of nursing homes."

The use of deed-in-lieu of foreclosure is now provided for in the regulations. The Department will encourage the prompt action by a coinsurer to acquire operational control of a property in order to maintain a high standard of healthcare operations for the residents. The assignment of Lessee privileges will be permitted.

**19. Operating Deficit Fund (§ 252.902(b)).**—One commenter stated that, in the case of the acquisition or refinancing of existing projects under the nursing home program, the coinsuring lender should establish the amount of the initial operating deficit, if any, rather than this amount being established by the Commissioner. The commenter had no objection to the Commissioner establishing criteria to be used by the coinsuring lender in reaching its determination.

A technical correction in the final rule provides that operating deficit calculations will be performed by the coinsuring lender.

**20. Occupancy Density Requirements for Board and Care Homes (§ 252.201(a)).**—In the proposed rule public comment was sought on alternative occupancy requirements for Board and Care Homes. Two options were listed. Due to the lack of substantive comments on this issue, the Department will continue to administer its current policy of providing for a maximum of four residents per bedroom and per bath, under Part 232.

21. Numerous "technical" revisions are made in this final rule—many of them in response to the public comments. Among the more significant revisions are:

#### *Section 252.203 Maximum Mortgage Limitations*

This section was reorganized to conform in structure with the other coinsurance programs. However, in the final rule, the mortgage amount, in connection with substantial rehabilitation, has been changed to conform with the additional limits set forth in Part 232.

#### *Section 252.301 Processing and Development Responsibilities*

The final rule adds an additional provision making the Commissioner responsible for a market/submarket impact analysis of the proposed facility. Also, the responsibility for the intergovernmental review process pursuant to 24 CFR Part 52 has been added to this section.

#### *Section 252.303 Required Certificates*

This section has been modified to reflect the requirements set forth in section 410 of the HCDA of 1987.

#### *Section 252.503 Mortgage and Note Provisions*

The requirement for the mortgage to contain a covenant prohibiting the use of the property for any purpose other than a residential care facility was inadvertently omitted in the proposed rule. It appears in the final rule.

#### *Section 252.501 Mortgage Requirements—Real Estate*

The proposed rule stated that if the mortgage is on real estate which is under lease, the lease must have a term of not less than 55 years from the execution date of the mortgage.

The final rule will extend that term to 75 years beyond the mortgage execution date. This will conform this part to Parts 251 and 255.

#### *Section 252.703 Charges for Facilities and Services*

The final rule has been amended to include a prohibition against the collection of an admission fee, founder's fee, life care fee or any similar payment by the mortgagor in exchange for accommodations or services to a current or prospective resident.

#### *Section 252.705 Distributions and Residual Receipts*

There are no substantive changes to this section in the final rule except to add "public mortgagor" where appropriate. However, the entire section has been reorganized to more clearly describe the distributions to the various mortgagor types.

#### *Section 252.907 Payment of MIP by Mortgagor and Lender*

This section was inadvertently omitted from the proposed rule. It has been added to the final rule based on language in § 255.801.

#### *Conforming Amendments to Parts 251 and 255*

In developing this new Part 252, we discovered two technical flaws in the



current coinsurance regulations which should be corrected in conjunction with the publication of this final rule. One flaw is the inadvertent omission of the longstanding requirement (found in both full insurance and coinsurance programs) that the lender annually inspect the project and provide the Commissioner a report on its physical condition. (See § 207.260 Protection of mortgage security, paragraph (a). Annual inspection of property by mortgagee.)

This requirement was originally included in the section 223(f) Coinsurance regulations at § 255.216, Hazard insurance and physical condition. When the Section 221(d) Coinsurance regulations were drafted, there was a major restructuring of the rule, the insurance requirements were folded into § 251.503, Mortgage provisions, and the annual physical inspection requirement fell by the wayside. Subsequently, when Part 255 was restructured to conform to Part 251, the inspection requirement for section 223(f) coinsurance disappeared. Similarly, when Part 252 was drafted following the order and content of Parts 251 and 255, the annual inspection requirement was not included.

The final rule corrects this omission, under the heading "Protection of Mortgage Security", by adding a new section 806 to each of the Parts 251, 252 and 255.

The final rule also amends § 252.819, as well as the corresponding provisions of Parts 251 and 255, in order to correct another technical flaw concerning the computation of coinsurance benefits. Section 252.819 of the proposed rule, as well as 24 CFR 251.819 and 255.819, incorporate by reference 24 CFR 207.259(e), which describes the characteristics of debentures issued in the settlement of insurance benefits under the insurance programs. Section 207.259(e)(1) and (6) states that debentures shall be issued as of the date of default and will collect interest from the date of issue. Inadvertently, 24 CFR 251.819 and 255.819 did not exclude from the cross-reference the date of default provision. If debentures issued under the coinsurance programs were likewise issued as of the date of default, the mortgagee would receive two unintended windfalls. First, the mortgagee would receive both mortgage interest and debenture interest ("double interest") covering the same period of time with respect to the principal amount included in the debentures. Second, the mortgagee would earn debenture interest on the mortgage interest ("interest on interest") included in the face amount of the debenture. As

a result, debenture settlements would have a considerably greater dollar value to the mortgagee than cash settlements. These consequences would be inconsistent with the basic principles of HUD's multifamily mortgage insurance programs. HUD does not pay double interest or interest on interest in either full insurance cash or debenture settlements. Moreover, in full insurance claims the benefits paid to the lender under a cash settlement are equivalent to the benefits paid under a debenture settlement; it has always been HUD's intent that this parity be maintained in the coinsurance program. Finally, the payment of double interest and interest on interest would violate the basic statutory principle in section 244(a)(1) of the National Housing Act that the mortgagee will assume a fixed percentage of the loss on the insured mortgage "in direct proportion to the amount of the coinsurance \* \* \*." The revisions included in this final rule clarify the original intent that in debenture settlements, as in cash settlements, the mortgage is entitled to receive only mortgage interest for the period from the date of default until the date of settlement.

To allow double interest and interest on interest would create a result that was never intended under the coinsurance program and that would be irrational. A court would not enforce a "plain meaning" interpretation of a regulation which produced an unreasonable result. See *United States v. American Trucking Assn.*, 310 U.S. 534, 543 (1940). This technical correction to 24 CFR 251.819 and 255.819 will not interfere with the legitimate expectations of coinsuring lenders on the amount of HUD's insurance claim settlement. The purpose of the insurance is to guarantee to lenders reimbursement for HUD's share of the loss. Computation of insurance benefits under 24 CFR 251.820-251.822 and 255.820-251.823 fully compensates the lenders for HUD's share of the loss. In any event there is no basis for lenders to expect that a debenture settlement should result in a substantially greater payment than a cash settlement.

#### Procedural Requirements

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Experience under HUD section 232 full insurance has not demonstrated any substantial impact on small entities. The new coinsurance program would supplement

and be carried out in coordination with this full insurance program.

This rule was listed as item H-32-86 [Sequence Number 949] in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854) under Executive Order 12291 and the Regulatory Flexibility Act.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). The OMB control numbers, when assigned will be announced by separate publication in the Federal Register.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises in domestic or export markets.

The catalog of Federal Domestic Assistance program numbers are 14.129, 14.173 and 14.176.

#### List of Subjects

##### 24 CFR Part 232

Fire prevention, Health facilities, Mortgage insurance, Nursing homes, Intermediate care facilities, Board and care homes.

##### 24 CFR Part 251

Mortgage insurance, Coinsurance of multifamily mortgages.

##### 24 CFR Part 252

Mortgage insurance, Coinsurance of nursing homes, intermediate care facilities, and board and care homes.



## 24 CFR Part 255

Mortgage insurance, Coinsurance for multifamily mortgages.

Accordingly, 24 CFR Parts 232, 251 and 255 are amended and a new Part 252 is added to title 24 of the CFR, as follows:

**PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES**

1. The authority citation for 24 CFR Part 232 is revised to read as follows:

Authority: Secs 211, 232 and 244, National Housing Act (12 U.S.C. 1715b, 1715w, and 1715z(9)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. The table of contents for 24 CFR Part 232 is amended by adding in appropriate sequence a new Subpart E consisting of the following new sections:

**Subpart E—Insurance of Mortgages Covering Existing Projects**

Sec.

232.901 Mortgages covering existing insured projects are eligible for insurance.

232.902 Eligible project.

232.903 Maximum mortgage limitations.

232.904 Term of the mortgage.

232.905 Labor standards and prevailing wage requirements.

232.906 Processing and commitment.

3. Paragraph (a)(2) of § 232.6 is revised to read as follows:

**§ 232.6 Required certificates.**

(a)(1) \* \* \*

(2) If an appropriate State agency does not exist, or if the State agency exists but is not empowered to provide a certification that there is a need for the nursing home or intermediate care facility or combined home and facility as required by paragraph (a)(1)(i), the lender shall not coinsure any mortgage under this section unless the State in which the home or facility or combined home and facility is located has conducted or commissioned and paid for the preparation of an independent study of market need and feasibility that (i) is prepared in accordance with the principles established by the American Institute of Certified Public Accountants; (ii) assesses, on a marketwide basis, the impact of the proposed home or facility or combined home and facility on, and its relationship to, other health care facilities and services, the percentages of excess beds, demographic projections, alternative health care delivery systems and the reimbursement structure of the home, facility, or combined home and facility; (iii) is certified as acceptable by an appropriate State official, and is

addressed to and acceptable to the Secretary in form and substance; and (iv) in the event the State does not prepare the study, is prepared by a financial consultant who is selected by the State or the applicant for insurance and is approved by the Secretary. The proposed mortgagor may reimburse the State for the cost of the independent feasibility study required by this paragraph.

\* \* \* \* \*

4. 24 CFR Part 232 is amended by adding at the end thereof a new subpart E to read as follows:

**Subpart E—Insurance of Mortgages Covering Existing Projects**

**§ 232.901 Mortgages covering existing insured projects are eligible for insurance.**

Notwithstanding the generally applicable requirement that mortgages insured under this part be limited to Projects to be constructed or substantially rehabilitated after commitment for insurance, a mortgage executed in connection with the purchase or refinancing of an existing Project covered by a mortgage insured by the Commissioner may be insured under this subpart pursuant to section 223(f) of the Act. A mortgage insured pursuant to this subpart shall meet all other requirements of this part except as expressly modified by this subpart.

**§ 232.902 Eligible project.**

(a) Existing Projects covered by a mortgage insured under section 232 of the Act (with such repairs and improvements as are determined by the Commissioner to be necessary) are eligible for insurance under this subpart. The Project must not require substantial rehabilitation as defined in paragraph (b) of this section and three years must have elapsed from the date of completion of construction or substantial rehabilitation of the Project, or from the beginning of occupancy, whichever is later, to the date of application for insurance. In addition, the Project must have attained sustaining occupancy (occupancy that would produce income sufficient to pay operating expenses, annual debt service and reserve fund for replacement requirements) as determined by the Commissioner, before endorsement of the Project for insurance; alternatively, the mortgagor must provide an operating deficit fund at the time of endorsement for insurance, in an amount, and under an agreement, approved by the Commissioner.

(b) "Substantial rehabilitation" consists of repairs, replacements, improvements and additions:

(1) The cost of which exceeds the greater of fifteen percent (15%) of the Project's value after completion of all repairs, replacements, improvements, and additions, or

(2) That involve the replacement of more than one major building component. For purposes of this definition, the term major building component includes:

- (i) Roof structures;
- (ii) Ceiling, wall, or floor structures;
- (iii) Foundations;
- (iv) Plumbing systems;
- (v) Heating and air conditioning systems;
- (vi) Electrical systems.

**§ 232.903 Maximum mortgage limitations.**

Notwithstanding the maximum mortgage limitations set forth in § 232.30, a mortgage within the limits set forth in this section shall be eligible for insurance under this subpart.

(a) *Value limit.* The mortgage shall involve a principal obligation of not in excess of eighty-five percent (85%) of the Commissioners estimate of the value of the Project, including major movable equipment to be used in its operation and any repairs and improvements. The Commissioner's estimate of value shall result from consideration of:

- (1) Estimated market value of the Project by capitalization,
- (2) Estimated market value of the Project by direct sales comparison, and
- (3) Total estimated replacement cost of the Project.

In the event the mortgage is secured by a leasehold estate rather than a fee simple estate, the value of the property described in the mortgage shall be the value of the leasehold estate (as determined by the Commissioner) which shall in all cases be less than the value of the property in fee simple.

(b) *Debt service limit.* The insured mortgage shall involve a principal obligation not in excess of the amount that could be amortized by eighty-five percent (85%) of net projected Project income available for payment of debt service. Net projected Project income available for debt service shall be determined by reducing the Commissioner's estimated gross income for the Project by a vacancy and collection loss factor and by the cost of all estimated operating expenses, including deposits to the reserve for replacements and taxes.

(c) *Project to be refinanced—additional limit.* In addition to meeting the requirements of paragraphs (a) and (b) of this section, if the Project is to be refinanced by the insured mortgage (i.e., without a change of ownership or with



the Project sold to a purchaser who has an identity of interest as defined by the Commissioner with the seller with the purchase to be financed with the insured mortgage), the maximum mortgage amount must not exceed the cost to refinance the existing indebtedness, which will consist of the following items, the eligibility and amounts of which must be determined by the Commissioner:

(1) The amount required to pay off the existing indebtedness;

(2) The amount of the initial deposit for the reserve fund for replacements;

(3) Reasonable and customary legal, organization, title, and recording expenses, including mortgagee fees under § 232.15;

(4) The estimated repair costs, if any;

(5) Architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees.

(d) *Project to be acquired—additional limit.* In addition to meeting the requirements of paragraphs (a) and (b) of this section, if the Project is to be acquired by the mortgagor and the purchase price is to be financed with the insured mortgage, the maximum amount must not exceed eighty-five percent (85%) of the cost of acquisitions as determined by the Commissioner. The cost of acquisition shall consist of the following items, to the extent that each item (except for item numbered (1)) is paid by the purchaser separately from the purchase price. The eligibility and amounts of these items must be determined in accordance with standards established by the Commissioner.

(1) Purchase price is indicated in the purchase agreement;

(2) An amount for the initial deposit to the reserve fund for replacements;

(3) Reasonable and customary legal, organizational, title, and recording expenses, including mortgagee fees under § 232.15;

(4) The estimated repair cost, if any;

(5) Architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees.

#### § 232.904 Term of the mortgage.

Notwithstanding the provisions of § 232.27, a mortgage insured under this subpart must have a maturity satisfactory to the Commissioner which is not less than 10 years, nor more than the lesser of 35 years or 75 percent of the estimated remaining economic life of the physical improvements. The term of the mortgage will begin on the first day of the second month following the date of endorsement of the mortgage for insurance.

#### § 232.905 Labor standards and prevailing wage requirements.

The provisions of §§ 232.70–232.74 of this part shall not apply to mortgages insured under commitments issued in accordance with this subpart.

#### § 232.906 Processing and commitment.

Notwithstanding the provisions of §§ 232.5, 232.10 and 232.12 of this part, a mortgage insured under this subpart shall meet the following application's commitment, inspection and fee requirements.

(a) *Application.* An application for a conditional or firm commitment for insurance of a mortgage on a Project shall be submitted by the sponsor and an approved mortgagee. Such application shall be submitted to the local HUD office on an FHA approved form. No application shall be considered unless accompanied by the exhibits required by the form. An application may, at the option of the applicant, be submitted for a firm commitment omitting the conditional commitment stage. An application may be made for a commitment which provides for the insurance of the mortgage upon completion of the improvements or for a commitment which provides, in accordance with standards established by the Commissioner, for the completing of specified repairs and improvements after endorsement.

(b) *Application fee—conditional commitment.* An application-commitment fee of \$2 per thousand dollars of the requested mortgage amount shall accompany an application for conditional commitment.

(c) *Application fee—firm commitment.* An application for firm commitment shall be accompanied by an application-commitment fee of \$3 per thousand dollars of the requested mortgage amount to be insured less the amount of any fee previously received for a conditional commitment.

(d) *Inspection fee.* Where an application provides for the completion of repairs and improvements, an inspection fee of up to one percent (1%) of the cost of the repairs and improvements may be charged by the Commissioner.

#### PART 251—COINSURANCE FOR THE CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF MULTIFAMILY HOUSING PROJECTS

3. The authority citation for 24 CFR Part 251 continues to read as follows:

Authority: Secs. 211 and 244, National Housing Act (12 U.S.C. 1715b and 1715z(9)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. 24 CFR Part 251 is amended by adding a new undesignated center heading and new § 251.806 to read as follows:

#### Protection of Mortgage Security

##### § 251.806 Annual physical inspection.

As long as the mortgage is coinsured by the Commissioner, the lender must ascertain the general physical condition of the property at least once in each calendar year. The lender must furnish the Commissioner and the mortgagor a copy of its inspection report, which must contain the lender's recommendations for any corrective actions.

5. Section 251.819 is revised to read as follows:

##### § 251.819 Method of payment.

The Commissioner will pay insurance benefits in cash, unless the lender files a written request for payment in debentures. In the event that the lender requests debentures, all of the provisions of 24 CFR 207.259(e) will apply, except that the debentures will be dated as of the date of settlement of the claim.

6. Title 24 of the Code of Federal Regulations is amended by adding a new Part 252, to read as follows:

#### PART 252—COINSURANCE OF MORTGAGES COVERING NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

##### Subpart A—General Provisions

- Sec.
- 252.1 Purpose and scope.
- 252.2 Coinsurance contract.
- 252.3 Definitions.
- 252.4 Effect of amendments.

##### Subpart B—Lender Requirements

- 252.101 Eligible lender.
- 252.102 Review and approval as coinsuring lender.
- 252.103 Duration of approval.
- 252.104 Withdrawal of approval.
- 252.105 Delegation of servicing.
- 252.106 Assignment of and participation in coinsured mortgages.
- 252.107 Reinsurance.
- 252.108 Pledging and other security arrangements.
- 252.109 Minimum principal loan amount.
- 252.110 Limitations on individual mortgage amounts.

##### Subpart C—Program Requirements

- 252.201 Eligible project.
- 252.202 Eligible mortgagors.
- 252.203 Maximum mortgage limitations.
- 252.204 Maximum interest rate.
- 252.205 Term of the mortgage.
- 252.206 Lender's fees and premiums.
- 252.207 Coinsurance of mortgages in lender's portfolio.



- 252.208 Nondiscrimination in housing and employment.  
252.209 Labor standards and prevailing wage requirements.

#### Subpart D—Processing and Commitment

- 252.301 Processing and development responsibilities.  
252.302 Processing and commitment.  
252.303 Required certificates.

#### Subpart E—Insurance of Advances; Insurance Upon Completion; Construction Period

- 252.401 Insurance of advances or insurance upon completion; Applicability of requirements.  
252.402 Insurance of advances.  
252.403 Insurance upon completion.  
252.404 Requirements applicable to both insurance of advances and insurance upon completion cases.  
252.405 Lender review of mortgage amount.  
252.406 Application of net income received before beginning of amortization.  
252.407 Endorsement by Commissioner.

#### Subpart F—Mortgage and Closing Requirements

- 252.501 Mortgage requirements—real estate.  
252.502 Title.  
252.503 Mortgage and note provisions.  
252.504 Mortgage lien and other obligations.  
252.505 Regulatory agreement.  
252.506 Other closing documents.

#### Subpart G—Requirements Relating to Structure of Mortgage Entity and Transfers of Ownership Interest

- 252.601 Requirements applicable to all projects.

#### Subpart H—Program Requirements Relating to Project Operation

- 252.701 General.  
252.702 Reserve for replacements and general operating reserve.  
252.703 Charges for facilities and services.  
252.704 Use of project funds.  
252.705 Distributions and residual receipts.  
252.706 Project management.

#### Subpart I—Contract Rights and Obligations

##### Mortgage Insurance Premiums

- 252.801 MIP in insurance of advances cases.  
252.802 MIP in insurance upon completion cases.  
252.803 Duration and method of payment of MIP.  
252.804 Pro rata refund of annual MIP.  
252.805 Late charges—MIP.

##### Protection of Mortgage Security

- 252.806 Annual physical inspection.

##### Delinquency and Default Under the Mortgage

- 252.807 Notice of delinquency.  
252.808 Definition of default.  
252.809 Date of default.  
252.810 Notice of default.  
252.811 Financial relief to cure a default.  
252.812 Reinstatement of a defaulted mortgage.

##### Termination

- 252.813 Termination of coinsurance contract.

- 252.814 Notice and date of termination by Commissioner.

#### Claim Procedure and Payment of Insurance Benefits

- 252.815 Notice of election to acquire property and file a claim.  
252.816 Acquisition of property.  
252.817 Deed in lieu of foreclosure.  
252.818 Disposition of property and application for insurance benefits.  
252.819 Method of payment.  
252.820 Amount of payment.  
252.821 Items included in payment.  
252.822 Items deducted from payment.  
252.823 [Reserved]

#### Remedies for Default by a Lender-Issuer Under the Government National Mortgage Association (GNMA) Mortgage-Backed Securities Program

- 252.824 Indemnification of GNMA.  
252.825 Withdrawal of lender approval.  
252.826 HUD recourse against lender-issuer.  
252.827 GNMA right to assignment.  
252.828 GNMA right to claim coinsurance benefits after lender-issuer's acquisition of title.

#### Subpart J—Coinsurance of Mortgages Covering Existing Projects

- 252.901 Mortgages covering existing insured projects eligible for coinsurance.  
252.902 Eligible project.  
252.903 Maximum mortgage limitations.  
252.904 Term of the mortgage.  
252.905 Labor standards and prevailing wage requirements.  
252.906 Processing and commitment.  
252.907 Payment of MIP by Mortgagor and lender.

Authority: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)), Sec. 211, National Housing Act, 12 U.S.C. 1715(b), and Sec. 244, National Housing Act, 12 U.S.C. 1715z(9).

#### Subpart A—General Provisions

##### § 252.1 Purpose and scope.

(a) Section 307 of the Housing and Community Development Act of 1974 amended the National Housing Act (the Act) by adding a new section 244 entitled, "Coinsurance". Section 244 authorizes the Department to insure, under a Coinsurance Contract, any Mortgage otherwise eligible for insurance under Title II of the Act. The Coinsurance Contract provides that the approval lender:

(1) Assume a percentage of any loss, and

(2) Carry out (subject to monitoring) underwriting, commitment, loan servicing, management oversight, property disposition and other functions that the Federal Housing Commissioner (Commissioner) approves.

(b) HUD expects that the sharing of risk and the assumption by the lender of major processing functions under Coinsurance will reduce processing time and HUD staff burden, and increase

lender involvement in all phases of the HUD mortgage insurance process.

(c) This part provides for the Coinsurance of Mortgages under section 232 of the Act, which covers nursing homes, intermediate care facilities and board and care homes. With the exception of mortgages coinsured under Subpart J of this part, Projects covered by a coinsurance mortgage under this part must be newly constructed or substantially rehabilitated.

(d) No full insurance authorized under any provision of the Act will be withdrawn, denied, or delayed because of the availability of Coinsurance under this part.

(e)(1) If the Commissioner determines that Coinsurance under this part is having an adverse effect on the availability of Mortgage credit to older and declining neighborhoods, the Commissioner will discontinue the program after due notice. In such a case, no further Coinsurance applications will be accepted nor will any further commitments under the program be authorized.

(2) If the Commissioner determines that coinsurance under this part is disrupting (or will disrupt) the market for projects under this part and related facilities or mortgage markets, or is adversely impacting (or will adversely impact) other federally insured projects in a market area, the Commissioner will modify, suspend, or discontinue coinsurance activities in such area after due notice.

(f) Neither the Coinsuring lender nor the Mortgagor shall have any vested or other right in the General Insurance Fund.

##### § 252.2 Coinsurance contract.

The Contract of Coinsurance is the agreement between the lender and the Commissioner to coinsure a Mortgage under this part. It is evidenced by an endorsement on the Mortgage note by the Commissioner, or by the Commissioner's authorized Departmental representative, and includes the terms, conditions and provisions of this part.

##### § 252.3 Definitions.

(a) "Act" means the National Housing Act, as amended.

(b) "Board and Care Home" means a proprietary residential facility, or a residential facility owned by a private nonprofit corporation or association, providing room, board and continuous protective oversight, which facility is regulated by a State in accordance with section 1616(e) of the Social Security Act. Said facility will be located in a



State that, at the time an application is made for coinsurance under this part, has demonstrated to the coinsuring lender that it is in compliance with the provisions of section 1616(e). Continuous protective oversight involves a range of activities or services, which services might include such services for relatively independent occupants as awareness on the part of management and staff of an occupant's condition and whereabouts and the ability to intervene in the event of crisis, or for relatively dependent occupants, such services as supervision of nutrition or medication, assistance as necessary with activities of daily living, such as bathing, dressing, shopping, or eating, or a twenty-four hour responsibility for the welfare of the occupant. Continuous protective oversight is not limited to the above activities, nor must it include the examples given.

(c) "Coinsured mortgage" means a Mortgage concerning which the risk of loss is shared by the lender and the Commissioner. The coinsurance is evidenced by an endorsement of the mortgage note by the Commissioner or by the Commissioner's authorized representative.

(d) "Distribution" means the withdrawal of any cash or asset of the Project, excluding outlays for:

(1) Any payment due under the Mortgage or regulatory agreement.  
(2) Reasonable expenses necessary for proper operation and maintenance of the Project; and

(3) Repayment of advances from the owner, when such repayments are authorized by the Commissioner.

(e) "Firm commitment" means the commitment from the lender to the Mortgage that contains final determinations by the lender of the maximum insurable Mortgage, which determination is based upon complete working drawings, specifications and cost estimates, and is prepared in a manner specified by the Commissioner. The Firm Commitment may not be issued for longer than sixty days, by which time the Project must be initially endorsed for insurance of advances cases, or construction started for insurance upon completion cases. The Firm Commitment may be extended by the lender as provided in § 252.4.

(f) "Intermediate Care Facility" means a proprietary facility or a facility of a private nonprofit corporation or association licensed or regulated by the State, or if there is no State law providing for such licensing and regulation, then by the municipality or other political subdivision in which the facility is located. The facility will provide for the accommodation of

persons who, because of incapacitating infirmities, require minimum but continuous care but are not in need of continuous medical or nursing services.

(g) "Mortgage" means a first lien on real estate and other property commonly given to secure either advances on real estate or the unpaid balance of the purchase price of real estate under the laws of the jurisdiction in which the real estate is located. "Mortgage" includes any credit instrument(s) secured by the real estate.

(h) "Mortgage Insurance Premium" (MIP) means the mortgage insurance premium collected under §§ 252.801 and 252.802 of this part.

(i) "Mortgagor" means the original borrower under a Mortgage and its successors, and any assigns approved by the Commissioner.

(j) "Nonprofit mortgagor" means an entity that is organized for reasons other than financial gain and that the lender finds is not controlled or directed by persons or firms seeking to derive financial gain from it. The operation of a Nonprofit Mortgagor must be regulated under Federal or State law, and by the lender by means of a regulatory agreement.

(k) "Nursing Home" means a public facility, proprietary facility or a facility of a private nonprofit corporation or association, licensed or regulated by the State (or if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located) for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care but who require skilled nursing care and related medical services. In all such facilities the nursing care and medical services must be prescribed by, or under general direction of, persons licensed to provide such care or services in accordance with the laws of the State where the facility is located.

(l) "Project" means a Nursing Home, Intermediate Care Facility or Board and Care Home, or any combination of Nursing Home, Intermediate Care Facility, or Board and Care Home approved by the lender under provisions of this subpart. A Project includes the land on which it is situated and, subject to standards established by the Commissioner, a Project may include:

(1) Such additional facilities as may be authorized by the lender for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day and

(2) Such major movable equipment as may be authorized by the lender as

necessary for the operation of the Project.

(m) "Proprietary mortgagor" means an owner that is profit motivated, and may be a corporation, partnership, trust, individual, or any other qualified legal entity.

(n) "Public Mortgagor" means a Federal or State instrumentality, a municipal corporate instrumentality of one or more states, or a redevelopment or housing corporation formed under and restricted by Federal or State laws or regulations of a State banking or insurance department as to charges, capital structure, rate of return, or methods of operation.

(o) "Residual Receipts" means all surplus cash of projects owned by nonprofit or public mortgagors.

(p) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

(q) "Substantial rehabilitation" consists of repairs, replacements, and improvements and additions:

(1) The cost of which exceeds fifteen percent (15%) of the Project's value after completion of all repairs, replacements, improvements, and additions, or

(2) That involve the replacement of more than one major building component. For purposes of this definition, the term major building component includes:

(i) Roof structures;  
(ii) Ceiling, wall, or floor structures;  
(iii) Foundations;  
(iv) Plumbing systems;  
(v) Heating and air conditioning systems;

(vi) Electrical systems.

(r) "Sound capital resources" means the excess of the coinsuring lender's assets (minus any valuation allowances) over its liabilities (generally referred to as its net worth), plus allowed letters of credit. Net worth includes paid-in capital stock, surplus reserves, undistributed earnings and any other unencumbered resources of the coinsuring lender. Sound capital resources may include (up to the limit specified in § 252.102(b)(2)) an unconditional and irrevocable firm letter of credit from a supervised financial institution with assets of not less than \$100,000,000. For purposes of determining sound capital resources, an account established to cover coinsurance obligations under this part that is treated as a liability in the lender's balance sheets may be deemed a capital item rather than a liability.

(s) "Surplus cash" means any unrestricted cash remaining after:



## (1) The payment of:

(i) All sums due or currently required to be paid under the terms of the Mortgage coinsured by the Commissioner;

(ii) All amounts required to be deposited in any replacement or operating reserve; and

(iii) All other obligations of the Project, unless funds for payment are set aside or deferral of payment has been approved by the lender; and

(2) The segregation and recording of an amount equal to:

(i) The aggregate of any special funds required to be maintained by the Project; and

(ii) The Project's total liability for patient or resident security deposits.

In computing Surplus Cash, the Mortgagor must follow any administrative requirements prescribed by the Commissioner.

**§ 252.4 Effect of amendments.**

The Commissioner may amend the regulations in this part from time to time. Amendments will not adversely affect the interests of a lender under a Contract of Coinsurance on any Mortgage already coinsured or on any Mortgage to be coinsured on which the lender has already issued a firm commitment to insure, provided the Mortgage is initially endorsed (insurance of advances) or construction starts (insurance upon completion) within 60 days after issuance of the Firm Commitment. The 60 days will run from the date of the original issuance of the Firm Commitment or from the date of any amendment, reissuance, or extension of a commitment that occurred before the effective date of the amendment of the regulation.

**Subpart B—Lender Requirements****§ 252.101 Eligible lender.**

The Commissioner may approve as a coinsuring lender any lender that (a) is currently a HUD-approved multifamily lender under 24 CFR 203.1 through 203.4, 203.6 or 203.7(c); and (b) meets the requirements of § 252.102. A lender approved as a coinsuring lender under the provisions of 24 CFR Part 255 may be approved for coinsurance for the purchase or refinancing of Nursing Homes, Intermediate Care Facilities or Board and Care Homes only if the lender has also been approved as a coinsuring lender under provisions of this part.

**§ 252.102 Review and approval as coinsuring lender.**

The Commissioner will review an applicant lender's technical staff and

procedures before granting approval as a coinsuring lender under this part. This review, which may include an on-site review of the lender's operations, will establish the adequacy of technical staff, processing procedures, development and management oversight, mortgage servicing, and any disposition functions.

(a) A fee of \$5,000 is charged for each application for approval as a coinsuring lender. This fee will not be refunded once the application has been determined acceptable for initial review.

(b) An applicant lender must submit:

(1) A written opinion of its counsel that it has the necessary powers to participate in the coinsurance program under this part.

(2) Evidence acceptable to the Commissioner of Sound Capital Resources of not less than \$1,500,000, in liquid funds. Up to \$500,000 of the Sound Capital Resources may be met by an unconditional and irrevocable firm letter of credit. The lender must agree that, for the period of the coinsurance, it will maintain the basic Sound Capital Resources requirement.

(3) A statement agreeing to establish and maintain on its books as a portion of its Sound Capital Resources a designated and dedicated account in liquid assets which could only be used for the purpose of meeting the lender's coinsurance obligations as defined in the Commissioner's administrative requirements. The dedicated account within the lender's liquid Sound Capital Resources must be established initially in an amount not less than \$500,000. Thereafter, the lender must deposit and maintain the following additional assets in the dedicated account:

(i) A deposit at the time of each loan closing, in accordance with the following schedule:

(A) \$1 for each \$150 of principal indebtedness on mortgages it coinsures under this part, until the dedicated account reaches \$3 million; and

(B) \$1 per \$300 thereafter.

(ii) An amount equivalent to four years of the lender's share of the annual mortgage insurance premium for each project to be deposited at the time of each loan closing or in increments within four years of closing.

The Commissioner may provide by Notice published in the *Federal Register* program-wide standards for reduced deposits to the dedicated account based on program and lender actuarial experience.

(4) Evidence acceptable to the Commissioner that:

(i) The lender has the operating procedures, internal management controls, and technical staff necessary

to discharge full Mortgage underwriting, oversight, servicing, management, property repair and disposition, and other functions. It must employ adequate staff to monitor contract work and make final underwriting conclusions.

(ii) The lender has staff in its own employ who are experienced in the development and operation/management of Nursing Homes, Intermediate Care Facilities and Board and Care Homes and can analyze and evaluate various technical factors such as:

(A) The certificates required under the provisions of § 252.303 of this part.

(B) Reimbursement schedules for Nursing Homes, Intermediate Care Facilities and Board and Care Homes under Federal or State funded programs and other third party payors, and

(C) Market analyses, operational reviews, etc., for arriving at overall feasibility determinations.

(5) A statement agreeing to notify HUD of any changes in its operating procedures and principal staff and to make no changes that are inconsistent with this part.

(6) The lender's most recent detailed audit report of its financial records, supplemented as the Commissioner may require. The audit must be made by an independent certified public accountant or independent public accountant licensed by a regulatory authority of a State or other political subdivision on or before December 31, 1970.

(7) A statement agreeing to file periodic certifications on lender financial condition and annual audits similar to those described in paragraph (a)(6) of this section, and monthly reports on its processing and commitment activities, coinsured loan portfolio and loan servicing activities. The certifications, annual audits and reports must be prepared in formats acceptable to the Commissioner and submitted within the time limits established by the Commissioner.

(8) A statement agreeing to auditing by the Commissioner, the HUD Inspector General, and the Comptroller General of the United States with respect to its activities under this part. For this purpose, the Commissioner, the HUD Inspector General, the Comptroller General and their authorized agents shall have access to the financial records of the lender.

(9) A statement agreeing to comply with the provisions of Title VIII of the Civil Rights Act of 1968 as amended, the Equal Credit Opportunity Act, Executive Order 11063 as amended, and other Federal laws and regulations issued



under these authorities with respect to the lending, investing of funds in mortgages, or the lender's activities as a coinsuring lender under this part.

(10) A statement agreeing to retain all its legal obligations under this part, if it delegates servicing functions, as provided in § 252.105.

(11) A statement agreeing to abide by all applicable requirements issued by the Commissioner for performing the lender's functions under this part.

(12) A statement agreeing to notify HUD immediately whenever the lender's Sound Capital Resources fall below the level required by paragraph (b)(2) of this section. In addition, the lender must agree that it will request and receive approval from HUD before implementing any voluntary transfer or series of transfers of the lender's assets which would cause the lender's Sound Capital Resources to fall below the required level. Finally, the lender must agree that if such transfer does take place without prior HUD approval, the remaining assets of the lender and any assets disbursed without such approval will be deemed to be held in trust for the benefit of HUD, and consequently, HUD would have a cause of action against any of the original principals of the lender or any other party for any transfer not made in accordance with these requirements.

(13) A statement agreeing to file at each loan closing a certification with supporting documentation that an addition has been made to the lender's dedicated account for coinsurance obligations.

#### § 252.103 Duration of approval.

Initial approval as a coinsuring lender will continue in force until one of the following occurs:

(a) Expiration of the Secretary's authority to coinure under this part. A temporary lapse in this authority will not terminate the lender's approved coinsurer status or affect outstanding firm commitments or coinsurance in force. However, lenders are responsible for suspending issuance, extension, or reopening of commitments during these periods.

(b) Suspension or withdrawal of approval under § 252.104.

#### § 252.104 Withdrawal of approval.

(a) Approval as a coinsuring lender under this part may be withdrawn or suspended for any of the following causes:

(1) Failure to maintain satisfactory Sound Capital Resources and/or dedicated account for coinsurance obligations balances;

(2) Failure to operate the program in a prudent manner or to discharge its responsibilities under any regulatory agreement, coinsurance contract, or administrative procedures including handbooks and other issuances published by the Commissioner under this part.

(3) Payment or receipt by the lender, in any insurance transaction, of any fee, kickback, or other consideration, directly or indirectly, to or from any person who has received any consideration from another person for services related to the transaction; however, compensation may be paid for the actual performance of services approved by the Commissioner;

(4) Submission of a false, fraudulent or incomplete report to HUD or the incurring of any indebtedness to HUD for which no satisfactory repayment plan or agreement is in effect;

(5) Failure to pay any amount owed to a holder of securities guaranteed by the Government National Mortgage Association (GNMA) and backed by a coinsured loan;

(6) Assigning a Coinsured Mortgage to an entity that is not a HUD-approved coinsuring lender;

(7) Other reasons the Commissioner determines to be justified in accordance with Part 24 of this title or by action of the Mortgagee Review Board in accordance with Part 25 of this title.

(8) Failure to comply with the provisions of Executive Order 11063 as amended, the Equal Credit Opportunity Act, Title VIII of the Civil Rights Act of 1968, as amended, and regulations issued under these authorities with respect to the lending, investing of funds in mortgages, or the lender's activities as a coinsuring lender under this part.

(b) HUD may place a coinsuring lender on probation for a specified period of time for the purpose of evaluating the lender's compliance with the requirements of the coinsurance program. During the probation period the lender may continue to issue commitments for insurance, subject to conditions required by HUD. Such conditions may include, but are not limited to, submission of the processing to HUD for its approval before issuance of the commitment, increased requirements for the dedicated account for coinsurance obligations, and additional financial reports.

(c) Coinsuring lenders will be notified in writing by the Commissioner, or designee, when a probation, suspension or withdrawal action is taken. The notice will specifically state the cause, effect, and duration of the action. Lenders must comply with the conditions of the notice immediately,

but may request an informal hearing on the action within 10 working days of receipt of the notice. The hearing shall be held by the Commissioner or designee. The lender shall be given the opportunity to be heard within 10 days of receipt of the request and may be represented by counsel. The Commissioner or designee will notify the lender in writing of the results of the hearing within 10 working days of the hearing and receipt of any materials. A decision to withdraw, suspend, or continue probation following a hearing constitutes final agency action.

(d) Probation, withdrawal or suspension of approval as a coinsuring lender will not affect any coinsurance or commitments in effect at the time of the probation, withdrawal or suspension of approval.

(e) Serious misconduct or noncompliance with the requirements of the coinsurance program may also result in action against coinsuring lenders in accordance with Part 24 of this title or by action of the Mortgagee Review Board in accordance with Part 25 of this title.

#### § 252.105 Delegation of servicing.

(a) The lender must directly service all coinsured loans included in GNMA securities pools. In all other instances, the lender may choose to service its coinsured loans or arrange for another entity to service the Mortgages, provided the contract servicer is a HUD-approved lender under §§ 203.1 through 203.6, or § 203.7(c) of this chapter, and the coinsuring lender retains its obligations under this part.

(b) The lender must inform HUD of any delegation of servicing on a form prescribed by the Commissioner.

(c) If HUD considers the servicer's performance to be unsatisfactory, HUD may require the lender to cancel the servicing agreement after giving the lender a 30-day written notice.

#### § 252.106 Assignment of and participation in Coinsured Mortgages.

(a) *Assignment of coinsured mortgage.*

(1) A lender may assign a Coinsured Mortgage to another lender if the following requirements are satisfied:

(i) The assignee is a HUD-approved coinsuring lender;

(ii) The lender shows good cause for the assignment;

(iii) The Commissioner finds that the assignment is for good cause and that there will be no disadvantage to HUD; and

(iv) The Commissioner gives prior written approval for the assignment and



any risk allocation between the assignor and assignee.

(2) The lender must inform HUD promptly following the assignment of any coinsured mortgage. The lender will not be relieved of its obligation to pay Mortgage Insurance Premiums until HUD has received this notice.

(b) *Transfer of partial interest under participation agreement.* A partial interest in a coinsured mortgage or pool of insured mortgages may be transferred under a participation agreement or arrangement (such as a declaration of trust or the issuance of pass-through certificates) without obtaining the approval of the Commissioner, if the following conditions are met:

(1) Legal title to the coinsured mortgage or mortgages shall be held by an approved coinsuring lender, which shall for purposes of this paragraph (b), be referred to as the principal lender;

(2) The participation agreement, declaration of trust or other instrument under which the partial interest is transferred shall provide that:

(i) The principal lender shall remain the lender of record under the contract of coinsurance;

(ii) The Commissioner shall have no obligation to recognize or do business with anyone other than the principal lender with respect to the rights, benefits and obligations of the lender under the contract of coinsurance; and

(iii) The mortgagor shall have no obligation to recognize or do business with anyone other than the principal lender or its servicing agents with respect to the rights, benefits and obligations of the mortgagor or the lender under the coinsured mortgage; and

(3) The participation agreement, declaration of trust or other instrument under which the interest is transferred shall disclose:

(i) That the principal lender has assumed a stated percentage of the risk of loss under the coinsured mortgage or mortgages;

(ii) Whether the transfer of the partial interest will shift any portion of the risk of loss to the holder of the partial interest; and

(iii) That no insurance fund administered by HUD will pay benefits to protect against any risk of loss assumed by the principal lender and transferred to the holder of the partial interest.

(c) *Government National Mortgage Association requirements.* (1) If the coinsured mortgage is used to back securities guaranteed by the Government National Mortgage Association (GNMA), GNMA approval

is required for the assignment of the pooled mortgage.

(2) When a coinsured mortgage is to be in a GNMA mortgage pool backing one or more GNMA Project Loan Certificates, the lender-issuer and the holder of a partial interest under paragraph (b) of this section must certify that the interest shall terminate as of the release (delivery) of the Project Loan Certificates. No partial interest may exist in mortgages backing GNMA Construction Loan Certificates or GNMA Project Loan Certificates.

#### § 252.107 Reinsurance.

(a) The lender may reinsure its potential loss with respect to a particular Project. Reinsurance may be obtained for:

(1) Up to and including 50 percent of its risk;

(2) Above 50 percent; or

(3) That percentage of its risk that equals the maximum amount the reinsurer is authorized by State law to reinsure.

(b) The effect of reinsurance on the insurance benefits payable by the Commissioner is governed by § 252.820.

(c) Any reinsurance policy must name the Commissioner as contingent beneficiary where default by the lender compels the Commissioner under § 252.824 to reimburse the Government National Mortgage Association for the amount that the GNMA had to pay securities holders as a result of the lender's default in payment, subject to the ceilings provided in § 252.824.

#### § 252.108 Pledging and other security arrangements.

A lender may pledge the beneficial interests in a Coinsured Mortgage as security under the terms of a reinsurance contract, trust indenture, third party guarantee agreement, or similar financing arrangement directly related to the coinsurance transaction, subject to the following conditions:

(a) The lender must retain legal title to the note and the Mortgage, subject to the security interest created, unless the title is otherwise transferred in accordance with § 252.106. Legal title to the note and Mortgage may not, at any time, be held by other than a coinsuring lender approved by the Commissioner.

(b) The Commissioner will have no obligation to recognize or deal with anyone other than the coinsuring lender of record or any successor to the lender's title to the Mortgage and mortgage note with respect to the rights, benefits, and obligations of the coinsuring lender.

(c) The Mortgagor will have no obligation to recognize or deal with

anyone other than the coinsuring lender or an approved coinsuring lender succeeding to title to the Mortgage or Mortgage note, or to such other person or entity servicing the Mortgage loan under § 252.105, except that the mortgagor may be directed to make payments under the Mortgage and the Mortgage note to a successor lender or to one or more custodial accounts.

(d) A lender may not pledge the beneficial interests of Coinsured Mortgages backing Government National Mortgage Association (GNMA) Construction or Project Loan Certificates except as authorized by GNMA.

#### § 252.109 Minimum principal loan amount.

A lender may not require, as a condition of providing a loan secured by a mortgage coinsured under this part, that the principal amount of the loan exceed a minimum amount established by the lender.

#### § 252.110 Limitations on individual mortgage amounts.

(a) Notwithstanding maximum mortgage limitations set forth in §§ 252.203 and 252.903, individual mortgage amounts will be limited by the level of the lender's Sound Capital Resources (as defined in § 252.102) as follows:

(1) Mortgages are limited to \$10 million per case where Sound Capital Resources are \$2.0 million or less;

(2) Mortgages are limited to \$15 million per case where Sound Capital Resources are \$2.5 million or less;

(3) Mortgages are limited to \$20 million per case where Sound Capital Resources are \$3 million or less; and

(4) There is no specified limit where Sound Capital Resources exceed \$3 million.

(b) In the event Sound Capital Resources diminish at any time, per case mortgage limits would apply according to the above schedule.

#### Subpart C—Program Requirements

##### § 252.201 Eligible project.

(a) Except as provided in Subpart J, to be eligible for coinsurance under this part a Project must be newly constructed or substantially rehabilitated. A Project must conform to standards established by the Commissioner, including limitations on commercial space, and comply with all applicable zoning or deed restrictions, and applicable building and other government regulations.

(1) If a nursing home or intermediate care facility, a Project shall consist of not fewer than 20 beds after completion



of the construction or rehabilitation. The nursing home or intermediate care beds must be clearly separate from any board and care beds in the facility.

(2) If a board and care home, a Project shall contain not fewer than five residential accommodations after completion of the construction or substantial rehabilitation. A maximum ratio of four persons per full bathroom shall be permitted in each board and care home. Group dining facilities shall be available. Kitchen facilities are not required in each accommodation or per full bathroom. Only one to four person occupancy will be permitted in each bedroom accommodation. A board and care home owner must also meet State and local occupancy requirements permitting fewer than four persons per accommodation or per full bathroom. The board and care beds will be clearly designated and separate from any nursing home or intermediate care beds in the facility.

(b) The Commissioner must review all projects proposed for coinsurance under this part for compliance with the requirements of the National Environmental Policy Act of 1969 and related laws and authorities as set forth in Part 50 of this title.

(c) No insurance will be made available under this part for any building located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless:

(1) The jurisdiction in which the project is located is participating in the National Flood Insurance Program and is subject to 44 CFR Parts 59 through 79 or

(2) Less than a year has passed since FEMA notification regarding such hazards, and flood insurance is obtained in compliance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(d) No insurance will be made available under this part with respect to a property within the Coastal Barriers Resources Systems established by the Coastal Barriers Resources Act (16 U.S.C. 3501).

(e) Wherever applicable, projects under this part must comply with the National Historic Preservation Act (16 U.S.C. 470).

#### § 252.202 Eligible mortgagors.

Public, nonprofit, and proprietary mortgagors approved by the coinsuring lender in accordance with standards established by the Commissioner are eligible under this part. The mortgagor must possess the legal powers necessary and incidental to operating the Project except where it leases the Project to a qualified operator, in which case the

lessee shall be approved by the coinsuring lender and must possess the legal powers necessary and incidental to operating the Project.

#### § 252.203 Maximum mortgage limitations.

The maximum mortgage coinsurable under this part is the lowest of the amounts determined under the following limits:

(a) *Value limit.* An amount not exceeding 90 percent of the lender's estimate of value of the project, including major movable equipment to be used in its operation.

(1) The final estimate of value for the purpose of this section results from consideration of three indicators of value:

(i) *The estimated market value of the project by capitalization.* Capitalization will use net income attributable to land, building improvements and major movable equipment (not business operations), capitalized at rates extracted from market transactions involving comparable properties.

(ii) *The estimated market value by direct sales comparison.* Market value by direct sales comparison will be estimated by comparison of the subject property with competing properties recently sold, using at least two other properties for the comparison.

(iii) *The total estimated replacement cost of the project* (without deducting depreciation). The total estimated replacement cost of the project (before depreciation) provides only an upper limit. The final estimate of value must be between that indicated by capitalization and that indicated by direct sales comparison, but may not exceed the total estimated replacement cost of the project.

(2) In the event the Mortgage is secured by a leasehold estate rather than a fee simple estate, the value of the property described in the Mortgage shall be the value of the leasehold estate (as determined by the lender) which shall in all cases be less than the value of the property in fee simple.

(b) *Debt service limit.* The net projected project income available for payment of debt service is determined by reducing the estimated gross income of the project by a vacancy and collection loss factor and by the cost of all estimated operating expenses, including deposits to the reserve for replacement, taxes and distributions, and by the return attributable to business operations. The maximum Coinsurable Mortgage cannot exceed the amount that could be amortized by 90 percent of net projected project income.

(c) *Rehabilitation projects—additional limits.* In addition to the limits of paragraphs (a) and (b) of this section, the following additional limits apply to projects to be substantially rehabilitated.

(1) Where the property is owned by the mortgagor in unencumbered fee simple or is subject to existing indebtedness to be refinanced by part of the proceeds of the coinsured mortgage, the maximum coinsurable mortgage may not exceed the sum of:

(i) The cost of rehabilitation plus

(ii) The lesser of the existing indebtedness or 90 percent of the lender's estimate of the value of the property before rehabilitation and installation of major movable equipment.

(2) Where the property is to be acquired and the purchase price to be financed with part of the proceeds of the coinsured mortgage, the maximum coinsurable mortgage may not exceed 90 percent of the sum of:

(i) The cost of rehabilitation plus

(ii) The lesser of the actual purchase price of the property or the lender's estimate of the value of the property before rehabilitation and installation of major movable equipment.

#### § 252.204 Maximum interest rate.

The interest rate in a commitment to coinsure, including a commitment for Mortgage increase, shall be at such rate as may be agreed upon by the Mortgagor and the coinsuring lender at the time the commitment is issued. The interest rate may be increased or decreased only after reprocessing and issuance of an amended commitment. The interest rate may not be increased after initial endorsement (insurance of advances) or start of construction (insurance upon completion), except that where a Mortgage increase is requested, processed, and approved, a higher rate may be applied to the amount of the increase only.

#### § 252.205 Term of the mortgage.

The Mortgage term may not exceed the lesser of 40 years from the date of first payment to principal or 75 percent of the lender's estimate of the project's remaining economic life.

#### § 252.206 Lender's fees and premiums.

(a) The lender may collect from the mortgagor, and include in the coinsured mortgage, an application fee, financing fee, permanent placement fee, and inspection fee. These fees may not exceed the maximums approved by the Commissioner. The lender may collect additional fees, approved by the



Commissioner, that are outside the coinsured mortgage and that must be disclosed at initial endorsement (insurance of advances) or endorsement (insurance upon completion). In no event will the fees allowed under this paragraph be permitted to exceed comparable fees allowed in the full insurance program under section 232 of the Act.

(b) The coinsuring lender may collect a lender's premium of up to .25 percent per year of the average outstanding principal balance of the Mortgage (without regard to delinquent payments or prepayments) beginning not earlier than 12 months after the date of initial endorsement (insurance of advances) or the date of endorsement (insurance upon completion). This premium will be for the account of the lender or an insurer of the lender.

**§ 252.207 Coinsurance of Mortgages in lender's portfolio.**

(a) Coinsurance under this part is available for Mortgages that the lender (or a related entity) already holds in its own portfolio only if:

(1) The loan is current and has not been in default, modification, or forbearance at any time during the two years preceding the submission of the application to the lender.

(2) Refinancing of portfolio loans makes up no more than one-fourth of the total number of loans the lender presents for endorsement for coinsurance during any 12-month period; and

(3) The entire loan transaction is reviewed and approved by the Commissioner (in his or her discretion) before any commitment is issued.

(b) The following loans will not be subject to the one-fourth limitation in paragraph (a)(2) of this section:

(1) Mortgages insured by HUD under its full insurance programs; and

(2) Mortgages in which the lender's sole involvement is servicing.

(3) Mortgages in which no equity is removed.

**§ 252.208 Nondiscrimination in housing and employment.**

The mortgagor shall certify to the lender and to the Commissioner that, as long as the mortgage is coinsured under this part:

(a) Neither it, nor anyone authorized to act for it, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable, or deny the property covered by the mortgage to any person because of race, color, sex, religion, or national origin;

(b) Any restrictive covenant on such property relating to race, color, sex, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed;

(c) Civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification;

(d) It will comply with title VIII of the Civil Rights Act of 1968, as amended, and implementing regulations and administrative procedures that prohibit discrimination because of race, color, religion (creed), sex, or national origin; administer the Project and related activities to further fair housing in an affirmative manner; and comply with State and local fair housing laws;

(e) It will comply with Executive Order 11063 and implementing regulations and administrative procedures that prohibit discrimination because of race, color, religion (creed), sex, or national origin in housing and related facilities provided with Federal financial assistance; and

(f) It will not discriminate because of race, color, religion, sex, or national origin against any employee or applicant for employment. Provisions to this effect, and, in addition, the provisions of Executive Order 12246 and 41 CFR Chapter 60, where appropriate, will apply to any contract or subcontract for project repairs and improvements over the life of the mortgage.

(g) Marketing will be done in accordance with the HUD-approved Affirmative Fair Housing Marketing Plan.

(h) It will not sell the project as long as the mortgage is coinsured under this part, unless the purchaser agrees to comply with the requirements of this section and with applicable transfer of physical asset requirements.

**§ 252.209 Labor standards and prevailing wage requirements.**

With the exception of mortgages coinsured under Subpart J of this part, the following labor standards and prevailing wage requirements shall be applicable to Mortgages coinsured under this part. The Commissioner shall assure compliance with those standards and requirements and the lender must obtain, evaluate, and submit any information or certifications required by the Commissioner to assist the Commissioner in carrying out this function.

(a) *Labor standards.* Any contract, subcontract, or building loan agreement executed for a project to be constructed or substantially rehabilitated under this part shall comply with all applicable

labor standards and provisions of 29 CFR Parts 1, 3 and 5, issued by the Secretary of Labor.

(b) *Ineligible advances.* No advance under the Mortgage shall be eligible for coinsurance after the lender determines (in accordance with the Commissioner's administrative procedures) that the general contractor or any subcontractor or any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed, on the ineligible list established by the Comptroller General, pursuant to 29 CFR 5.12, issued by the Secretary of Labor.

(c) *Wage certificate.* No advance under any Mortgage shall be coinsured under this part unless there is filed with the application for the advance, and no mortgage shall be coinsured under this part unless there is filed with the Commissioner after completion of the construction or Substantial Rehabilitation, a certificate or certificates in the form required by the Commissioner, supported by such other information as the Commissioner may prescribe, certifying that the laborers and mechanics employed in the construction of the dwelling or dwellings or Project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor before the beginning of construction and after the date of filing of the application for insurance.

(d) *Waiver of compliance with contract requirements—nonprofit mortgagors.* In the case of a nonprofit mortgagor, the Commissioner may waive the requirement for compliance with the contract provisions prescribed in paragraph (a) of this section in cases or classes of cases where laborers or mechanics, not otherwise employed at any time in the construction or rehabilitation of the project, voluntarily donate their services without compensation for the purpose of lowering the costs of construction and where the Commissioner determines that full credit has been received by the mortgagor for any amounts saved through such donated services.

**Subpart D—Processing and Commitment**

**§ 252.301 Processing and development responsibilities.**

(a) The lender is responsible for the performance of all functions under this



part, including acceptance and review of applications, issuance of commitments, inspections and closings, except those functions specified in paragraphs (b), (d) and (e) of this section.

(b) Certain functions are retained by the Commissioner. The lender must submit any information or certifications required by the Commissioner to permit determinations of compliance with requirements concerning:

(1) Previous participation of the principals of the Mortgagor, general contractor, consultant, and management agent in accordance with the Previous Participation and Clearance Review Procedures of 24 CFR 200.210 through 200.218;

(2) Environmental impact under the National Environmental Policy Act of 1969 and related laws and authorities set forth in 24 CFR Part 50;

(3) Equal opportunity considerations in the development and operation of the proposed project in accordance with the provisions of Executive Order 11063, as amended, the Equal Credit Opportunity Act, Title VIII of the Civil Rights Act of 1968, as amended, and regulations issued under these authorities.

(4) The National Historic Preservation Act, 16 U.S.C. 470, where applicable.

(5) Market/submarket review to determine the impact upon that market of the addition of the proposed healthcare facility.

(6) The intergovernmental review procedures of 24 CFR Part 52.

(c) The lender must also submit any information required by the Commissioner for tracking or monitoring purposes.

(d) The Commissioner's authorized Departmental representative must endorse the Mortgage for coinsurance.

(e) With the exception of mortgages coinsured under Subpart J of this part, the Commissioner retains responsibility for enforcement of labor standards and prevailing wage requirements set out in § 252.209. The Commissioner will perform all functions under § 252.209 except that he may delegate to the lender information collection (e.g., payroll review and routine interviews) or other routine administration and enforcement functions, subject to monitoring by the Commissioner.

#### § 252.302 Processing and commitment.

(a) After acceptance of an application for a commitment to coinsure, the lender will determine the maximum coinsurable Mortgage, review plans and specifications for compliance with HUD standards, determine the acceptability of the proposed management agent, and make other determinations necessary to assure acceptability of the proposed

project. The lender must make these determinations in the manner prescribed by the Commissioner.

(b) The lender may issue a Firm Commitment to coinsure after completion of its review and after receipt of written evidence from the Commissioner of (1) the acceptability of the Project in the areas of responsibility retained by the Commissioner under § 252.301(b) and (2) completion of any case review requirements of the Commissioner that are part of its lender approval process.

(c) Subject to standards established by the Commissioner, the lender is responsible for extending commitments, assuring commitments are updated when appropriate, and amending commitments. The lender may also reopen commitments within 90 days of the expiration of an earlier commitment, reconsider previously rejected applications, and may charge a reopening or reexamination fee acceptable to the Commissioner.

#### § 252.303 Required certificates.

(a)(1) Except as provided in paragraph (a)(2) of this section, every application for coinsurance of a nursing home or an intermediate care facility shall be accompanied by a certificate executed by the appropriate State agency for the State in which the project is or will be located, designated in accordance with section 604(a)(1) or section 1521 of the Public Health Service Act. Such certificate shall evidence that:

(i) There is need for the project.

(ii) There are in force in the State or other political subdivision of the State reasonable minimum standards for licensure and for methods of operation for the project.

(2) If an appropriate State agency does not exist, or if the State agency exists but is not empowered to provide a certification that there is a need for the nursing home or intermediate care facility or combined home and facility as required by paragraph (a)(1)(i) of this section, the lender shall not coinsure any mortgage under this section unless the State in which the home or facility or combined home and facility is located has conducted or commissioned and paid for the preparation of an independent study of market need and feasibility that:

(i) Is prepared in accordance with the principles established by the American Institute of Certified Public Accountants;

(ii) Assesses, on a marketwide basis, the impact of the proposed home or facility or combined home and facility on, and its relationship to, other health care facilities and services, the percentages of excess beds,

demographic projections, alternative health care delivery systems and the reimbursement structure of the home, facility, or combined home and facility;

(iii) Is certified as acceptable by an appropriate State official, and is addressed to and acceptable to the Secretary in form and substance; and

(iv) In the event the State does not prepare the study, is prepared by a financial consultant who is selected by the State or the applicant for coinsurance and is approved by the Secretary.

The proposed mortgagor may reimburse the State for the cost of the independent feasibility study required by this paragraph.

(b) In the case of a small intermediate care facility for the mentally retarded or developmentally disabled, the State program agency or agencies responsible for licensing, certifying, financing, or monitoring the facility or home may, in lieu of the certification of need requirement of paragraph (a)(1)(i) of this section, provide the Secretary with written support identifying the need for the facility or home.

(c) Every application for coinsurance involving a board and care home shall be accompanied by a statement executed by the appropriate State agency for the State in which the project is or will be located, certifying that the State is in compliance with section 1816(e) of the Social Security Act.

(d) No mortgage shall be coinsured under this subpart unless the Commissioner has been furnished with acceptable assurance from the appropriate State agency that the prescribed standards of licensure and operation will be applied and enforced with respect to any project for which mortgage insurance is provided.

#### Subpart E—Insurance of Advances; Insurance Upon Completion; Construction Period

##### § 252.401 Insurance of advances or insurance upon completion; applicability of requirements.

Either insurance of advances or insurance upon completion procedures may be used under this part. In insurance upon completion cases, only the permanent loan is coinsured and a single endorsement is required after satisfactory completion of construction or Substantial Rehabilitation. In insurance of advances cases, progress payments approved by the lender are also coinsured and both an initial and final endorsement on the Mortgage are required. The requirements of §§ 252.404 through 252.406 apply in either case and



the Mortgage and other closing documents must meet the requirements of Subpart F.

#### § 252.402 Insurance of advances.

(a) *Financial requirements.* (1) Before initial endorsement, the Mortgagor (other than a Nonprofit Mortgagor) must make a working capital deposit of two percent of the face amount of the Mortgage. The deposit must be made to the lender or be controlled by the lender in a depository acceptable to it. Unless the Commissioner approves exceptions, this deposit may be used only for equipping and rent-up of the project and, during construction, for allocation by the lender to accruals for taxes, ground rents, MIP, property insurance premiums, and assessments required by the terms of the Mortgage.

(2) Before initial endorsement, the Mortgagor must deposit with the lender cash that the lender deems sufficient, when added to the proceeds of the insured Mortgage, to assure completion of the project and to pay the initial service charge, the carrying charges, and the legal and organizational expenses incident to construction of the project. This cash will be held by the lender under an appropriate agreement. The agreement will require all cash held to be disbursed for work and material on the physical improvements, and for other charges and expenses to be paid when due, before the advance of any Mortgage money. If all or part of the funds required under this paragraph (a)(2) are to be provided through a grant or loan from a Federal, State or local governmental agency or instrumentality, Mortgage proceeds may, with the prior written approval of the Commissioner, be advanced before the full disbursement of the grant or loan funds, to pay cost of work, material or other charges and expenses. However, if any portion of these funds is to be provided by the Mortgagor, that portion must be disbursed in full before the disbursement of the Mortgage proceeds.

(3) Charges to be paid by the Mortgagor in connection with the financing that are in excess of the initial service charge and that are acceptable to the Commissioner must be deposited with the lender in cash at or before initial endorsement. Alternatively, a note, in a form prescribed by the Commissioner, may be accepted by the lender. The note must evidence the obligations of a party other than the Mortgagor and may not be secured by the assets of the Mortgagor entity.

(4) The lender must require assurance of completion of offsite public utilities and streets. (An exception is made where a public body has agreed to

install offsite improvements without cost to the Mortgagor and this agreement is acceptable to the lender.) The assurance must be either a cash escrow deposit or the retention by the lender at initial closing of a specified amount of the Mortgage proceeds allocated to land in the project analysis. If a cash escrow is used, it must be deposited with the lender or a depository designated by the lender. The lender may also require a surety bond.

(5) The lender may accept, in lieu of a cash deposit required by paragraphs (a)(1), (3) and (4) of this section, an unconditional irrevocable letter of credit issued to the lender by a banking institution. If all or part of the funds required under paragraph (a)(2) of this section are to be provided through a grant or loan from a Federal, State, or local governmental agency or instrumentality, the lender may accept for the portion so provided, in lieu of a cash deposit required by paragraph (a)(2) of this section, either an unconditional irrevocable letter of credit issued to the lender by a banking institution or an agreement, as described in § 207.19(c)(7) of this chapter, entered into by HUD, the governmental agency or instrumentality, the Mortgagor and the lender. The lender of record may not be issuer of any letter of credit referred to in this paragraph (a)(5) without the prior written consent of the Commissioner. If a demand under a letter of credit referred to in this paragraph is not immediately met, the lender must provide cash equivalent to the undrawn balance under the letter of credit.

(b) *Building loan agreement.* Before initial endorsement, the lender and Mortgagor must execute a building loan agreement in a form approved by the Commissioner. This agreement sets out the terms and conditions under which progress payment may be advanced during construction. To be covered by coinsurance, each progress payment must be approved by the lender and must contain a certificate that the prevailing wage requirements of § 252.209 have been met.

(c) *Insured advances of components stored off-site.* The provisions of 24 CFR 232.57 apply to projects coinsured under this part, except that the lender performs the functions otherwise performed by the Commissioner.

(d) *Assurance of completion.* (1) The Mortgagor must furnish assurance of completion of the Project. The lender may establish more stringent criteria, but, at minimum, must require assurance by bonds issued by a surety company acceptable to the lender, pursuant to

requirements established by the Commissioner for payment and performance each in the amount of 100 percent of the established construction or rehabilitation cost, or a completion assurance agreement secured by a cash deposit in the amount of 15 percent (or 25 percent where the structure contains an elevator and is four stories or more) of the amount of the estimated construction or rehabilitation cost. An unconditional and irrevocable letter of credit may be substituted for this cash deposit under the same terms and conditions as provided in paragraphs (a)(5) of this section.

(2) Alternatively, where the estimated cost of construction or rehabilitation is \$500,000 or less, the lender may accept assurance of completion in the form of a personal indemnity agreement executed by the controlling principals of the general contractor.

#### § 252.403 Insurance upon completion.

A commitment to coinsure upon completion prescribes a designated period during which the Mortgagor must start construction or Substantial Rehabilitation. If construction or rehabilitation is started as required, the commitment will be valid for an additional period no longer than the lender's estimate of the construction period plus six months, except as extended as provided § 252.302(c).

#### § 252.404 Requirements applicable to both insurance of advances and insurance upon completion cases.

(a) *Latent defects escrow.* (1) In insurance upon completion cases, the Mortgagor must make a cash escrow deposit at endorsement of two and one-half percent of the principal amount of the mortgage, or provide a surety bond of 10 percent of the lender's estimate of the cost of construction or Substantial Rehabilitation, as a latent defects escrow. An unconditional and irrevocable letter of credit may be substituted for this cash escrow deposit under the same terms and conditions as provided in § 252.402(a)(5). This escrow must be retained by the lender for 15 months after substantial completion.

(2) In insurance of advances cases, if a completion assurance agreement referred to in § 252.402(d) was used at initial endorsement, an amount equal to two and one-half percent of the construction contract must be retained in cash or a letter of credit for a period of 15 months following substantial completion as a latent defects escrow.

(b) *Inspections during construction.* The lender must inspect projects under this part at such times during



construction or Substantial Rehabilitation as the lender determines, within standards established by the Commissioner. The inspections must be conducted to assure compliance with the contract documents.

(c) *Cost certification requirements—Mortgagor.* (1) Before initial endorsement (insurance of advances) or start of construction (insurance upon completion) the Mortgagor and the lender must enter into an agreement satisfactory to the Commissioner that precludes any excess of Mortgage proceeds over statutory and regulatory limitations. In this agreement, the Mortgagor must also disclose its relationship with the builder, including any collateral agreement, and agree to:

(i) Enter into a construction contract that:

(A) Complies with the requirements of § 232.81 of this Chapter (as to whether the contract should be lump sum or cost-plus) and

(B) Is approved by the lender and acceptable to the Commissioner as to form and content;

(ii) Execute a certificate of actual costs when all physical improvements are complete; and

(iii) Reduce the Mortgage if necessary in accordance with § 252.405.

(2) The provisions of paragraph (c)(1) of this section relating to disclosure and the requirement of a construction contract do not apply where the Mortgagor and the general contractor are one and the same.

(3) If the Mortgagor, the general contractor, or their officers, directors, or stockholders have any interest, financial or otherwise, as defined by the Commissioner, in any subcontractor, material supplier, or equipment lessor, the Mortgagor must disclose the identity of interest before start of the construction. The lender may approve the use of a subcontractor, material supplier or equipment lessor having an identity of interest if the amounts paid to that entity do not exceed the rate prevailing in the locality for similar types of labor and materials.

(4) The Mortgagor's certificate of actual cost, in a form prescribed by the Commissioner, must be submitted to the lender when the improvements are completed to the satisfaction of the lender and before final endorsement (or before endorsement in the case of insurance upon completion). The certificate must show the actual cost to the Mortgagor of:

(i) The cost-plus construction contract or the lump sum construction contract or the cost of the construction of the Project where the Mortgagor and the general contractor are one and the same

and no construction contract is executed;

(ii) The architect's fee;

(iii) The offsite public utilities and streets not included in § 252.402(a)(4) of this part.

(iv) The organizational and legal expenses; and

(v) Other items of expense approved by the Commissioner.

(d) *Cost certification requirements—general contractor.* (1) Where a cost-plus form of contract is used, the Mortgagor must also submit to the lender a certification of the general contractor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials, and subcontract work under the general contract, exclusive of the builder's fee;

(2) Where there is a cost-plus contract and the lender determines that an identity of interest (as defined by the Commissioner) exists between the Mortgagor or general contractor or any of their officers, directors, stockholders, or partners and any subcontractor, material supplier, or equipment lessor, the lender may require the Mortgagor to submit a certification by the subcontractor, material supplier, or equipment lessor, as to the actual costs paid for labor, materials, subcontractors and overhead. This certification must be in a form prescribed by the Commissioner.

(e) *Exclusions.* The certifications required by paragraphs (c) (4) and (d) of this section may not include any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the Mortgagor or any of their officers, directors, stockholders or partners.

(f) *Records.* The Mortgagor must maintain adequate records of all costs of any construction or other cost items that do not represent work under the general contract and, in the case of a lump sum contract, must require the builder to keep similar records and, if requested by the lender or the Commissioner, must make these records (including any collateral agreements) available for examination, including examination by the Inspector General of HUD or the Comptroller General.

(g) *Certificate of public accountant.* In all Projects, cost certifications must be supported by an audit of the cost certification statement and accompanying financial statements by an independent Certified Public Accountant or by an independent public accountant licensed by a regulatory authority of a State or other political subdivision on or before December 31, 1970. The audit must include a statement that the accounts, records and

supporting documents have been examined in accordance with generally accepted auditing standards to the extent necessary to verify that they present fairly the actual costs.

(h) *Requisites of agreement and certification.* Any agreement, statement or certification required by this section must specifically state that it has been prepared for the purpose of influencing an official action of the Commissioner and may be relied upon by the Commissioner and the lender as true.

(i) *Cost certification incontestable.* Upon the lender's approval of the Mortgagor's certification, the certification will be final and incontestable except for fraud or material misrepresentation on the part of the Mortgagor.

#### § 252.405 Lender review of mortgage amount.

When the cost certifications submitted under § 252.404 are reviewed and approved by the lender, the lender must determine, in accordance with standards set by the Commissioner, whether a mortgage reduction is necessary and whether any requests for a mortgage increase are approvable.

#### § 252.406 Application of net income received before beginning of amortization.

(a) If prior to the beginning of amortization, net income, as defined by the Commissioner, is received as a result of the operation of the Project, such net income, to the extent determined by the lender, shall be applied in one or more of the following ways:

(1) To advance amortization.

(2) To offset construction costs approved by the lender.

(3) To be deposited in the reserve fund for replacement and to be held as a reserve in addition to the monthly deposits required by the regulatory agreement.

(b) The provisions of paragraph (a) of this section shall not be applicable to a mortgagor that is a private nonprofit corporation or association.

#### § 252.407 Endorsement by Commissioner.

Before start of construction in insurance of advances cases, and in all cases after completion of construction or Substantial Rehabilitation and completion of the lender's review of the Mortgage amount, the lender will hold a closing and submit required documentation to the Commissioner or the Commissioner's authorized Departmental representative for coinsurance of the Mortgage by endorsement of the Mortgage note. The note must identify the section of the



regulations under which the Mortgage is coinsured, the percentage of risk assumed by the lender and the Commissioner, and the date of coinsurance, *i.e.*, the date of HUD endorsement of the Project Mortgage. The lender's submission must include a certification that it has obtained written HUD approval of compliance with the requirements referred to in § 252.301(b) and any additional documents and information required by the Commissioner's administrative procedures.

#### Subpart F—Mortgage and Closing Requirements

##### § 252.501 Mortgage requirements—real estate.

The mortgage, to be eligible for insurance, shall be on property located in a State, as defined in § 252.3(n).

(a) The mortgage must be on real estate held:

- (1) In fee simple; or
- (2) Under a lease for not less than 99 years which is renewable; or
- (3) Under a lease having a period of not less than 75 years to run from the date the mortgage is executed; or
- (4) Under a lease executed by a governmental agency, an Indian, an Indian tribe, or such other lessor as the Commissioner may approve for the maximum term consistent with the legal authority for the execution of such a lease, provided that the term of any such lease shall run for a period of not less than 50 years from the date the mortgage is executed.

(b) The property must be held by an eligible Mortgagor and must, at the time the mortgage is coinsured, be free and clear of other liens except those approved by the lender in accordance with § 252.504.

(c) The mortgage must cover the entire property included in the facility.

##### § 252.502 Title.

(a) *Eligibility of title.* Title to the mortgaged property must be vested in the Mortgagor on the date the Mortgage is filed for record.

(b) *Title evidence.* Before coinsurance of the Mortgage, the Mortgagor must furnish the lender with a survey, satisfactory to the lender, of the mortgaged property and a title insurance policy covering the property. If, for reasons that are satisfactory to the lender, title insurance cannot be furnished, the Mortgagor must furnish evidence of title in accordance with paragraph (b)(2) of this section. The types of title evidence are:

(1) A title insurance policy issued by a company, and in a form, satisfactory to

the lender. The policy must name the lender and the Commissioner as the insureds, as their interests may appear. The policy must also provide that, upon acquisition of title by the lender, it will become an owner's policy running to the lender.

(2) An abstract of title satisfactory to the lender, prepared by an abstract company or an individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the lender as to the quality of the title, signed by an attorney experienced in the examination of titles.

##### § 252.503 Mortgage and note provisions.

(a) The mortgage and note must be executed on a form approved by the Commissioner for use in the jurisdiction in which the property is located. The form must not be changed without prior written approval of the Commissioner.

(b) The Mortgage must be executed by an eligible Mortgagor.

(c) The Mortgage must be a first lien on property that conforms with property standards prescribed by the Commissioner.

(d) The note must provide for equal monthly payments of interest and principal due on the first day of each month in accordance with a level annuity amortization plan agreed to by the Mortgagor and lender and acceptable to the Commissioner.

(e) The lender will determine the date of first payment to principal. The lapse of time between completion of the project and beginning of amortization must not be longer than the lender determines, in accordance with standards established by the Commissioner, to be necessary to obtain sustaining occupancy.

(f)(1) The Mortgage must provide that all monthly payments made by the Mortgagor to the lender be added together into a single payment made by the Mortgagor on each monthly payment date. The lender must apply payments received from the Mortgagor or for the account of the Mortgagor to the following items in the order listed:

- (i) MIP under Contract of Coinsurance;
- (ii) Ground rents, taxes, special assessments, and fire and other hazard insurance premiums;
- (iii) Interest on the Mortgage; and
- (iv) Principal on the Mortgage.

(2) Any deficiency in the amount of the aggregate monthly payment required under paragraph (f)(1) of this section will constitute a fiscal default. The Mortgage will further provide for a grace period of 30 days within which time the default must be made good.

(g) The Mortgage must provide for payments by the Mortgagor to the lender, on each monthly payment date, of an amount sufficient to accumulate the next annual MIP one payment period before the MIP is due. These payments will continue only as long as the Contract of Coinsurance is in effect.

(h) The Mortgage must provide for equal monthly payments sufficient to pay any ground rents, estimated taxes, water charges, special assessments, and fire and other hazard insurance premiums, within a period ending one month before these items become due. The Mortgage must also make provision for adjustments in case the estimated amount of any of these items differs from amounts actually payable by the Mortgagor.

(i) Partial or full prepayment of the mortgage is subject to the following standards and restrictions.

(1) *Proprietary facilities.* In the case of the mortgagor operating a proprietary facility, the following provisions shall be applicable:

(i) *Prepayment privilege.* Except as otherwise provided in paragraph (3), the mortgagor may prepay the mortgage in whole or in part upon any interest payment date after giving to the lender 30 days' notice in writing in advance of its intention to so prepay.

(ii) *Prepayment charge.* The mortgage may contain a provision for such additional charge in the event of prepayment of principal as may be agreed upon between the mortgagor and the coinsuring lender, in accordance with standards adopted by the Commissioner. Any reduction in the original principal amount of the mortgage resulting from the certification of cost requirements of this part shall not be construed as a prepayment of the mortgage.

(2) *Nonprofit facility.* In the case of a facility operated by a nonprofit corporation or association, the following provisions shall be applicable:

(i) *Prepayment in full.* The mortgage indebtedness may be prepaid in full and the Commissioner's controls terminated only upon the condition that the Commissioner's prior consent is obtained as he may prescribe.

(ii) *Partial prepayments.* With the prior written approval of the Commissioner, partial prepayments may be made for the purpose of reducing succeeding monthly payments of the remaining balances as recast over the remaining portion of the original mortgage term.

(iii) *Optional provision.* The mortgage may, if required by the lender, contain a provision that prior to maturity and with



the approval of the Commissioner, partial prepayments may be made after 30 days' written notice to the lender on any principal payment date. A reasonable charge may be allowed as agreed upon between the mortgagor and the lender in accordance with standards adopted by the Commissioner.

(3) *Prepayment of bond-financed mortgages.* Where the mortgage is given to secure a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to the lender as to terms, amount, and conditions in accordance with standards adopted by the Commissioner.

(j) The note may provide for the collection by the lender of a late charge, not to exceed four percent of each payment to interest and principal that is more than 15 days late, or such other charges as may be agreed to by the lender and the Commissioner, to cover the extra expense of handling delinquent payments. Late charges must be separately charged to and collected from the Mortgagor and may not be deducted from any total monthly payment.

(k) The mortgage must contain a covenant prohibiting the use of the property for any purpose other than as a residential care facility eligible for coinsurance under this part.

(l) The mortgage must contain a covenant, acceptable to the Commissioner, that binds the mortgagor to keep the property insured by one or more standard policies for fire or other hazards stipulated by the Commissioner or the lender. The amount must comply with the coinsurance clause applicable to the location and character of the property, but may not be less than 80 percent of the actual cash value of the insurable improvements and equipment of the project. The initial coverage must be in the amount estimated by the lender after completion of the project. A standard mortgagee clause making loss payable to the lender and the Commissioner as their interests may appear must be included in the insurance policy. The lender is responsible for assuring that insurance is maintained in force and in the amount required by this paragraph and the mortgage. If the mortgagor does not obtain the required insurance, the lender must do so and assess the mortgagor for such costs. These insurance requirements apply as long as the Coinsurance Contract is in force.

#### **§ 252.504 Mortgage lien and other obligations.**

The mortgagor and the lender must certify at endorsement of the loan for insurance, and the lender must determine:

(a) That the mortgage is a first lien upon and covers the entire Project, including the equipment financed with mortgage proceeds.

(b) That the property upon which the improvements have been made or constructed, and the equipment financed with mortgage proceeds, are free and clear of all liens other than the insured mortgage and such other liens as may be approved by the lender in accordance with standards established by the Commissioner.

(c) That the certificate sets forth all unpaid obligations in connection with the mortgage transaction, the purchase of the mortgaged property, the construction or rehabilitation of the Project or the purchase of the equipment financed with mortgage proceeds.

#### **§ 252.505 Regulatory agreement.**

The lender and the Mortgagor must execute a regulatory agreement in a form acceptable to the Commissioner. The regulatory agreement must require the Mortgagor to comply with the requirements of Subparts G and H and other applicable provisions of this part for as long as the Commissioner coinsures the Mortgage. In the regulatory agreement, the lender may regulate the Mortgagor on other matters if the Commissioner determines that the additional lender controls or requirements do not conflict with the requirements of this part or requirements contained in the administrative instructions issued under this part.

#### **§ 252.506 Other closing documents.**

The lender will require execution of such other closing documents as the Commissioner may require.

### **Subpart G—Requirements Relating to Structure of Mortgagor Entity and Transfers of Ownership Interest**

#### **§ 252.601 Requirements applicable to all projects.**

(a) The Mortgagor may issue shares of capital stock, partnership participations or beneficial certificates of interest, as applicable, only in the number and form approved by the lender.

(b) The Mortgagor must comply with the Commissioner's administrative procedures for previous participation clearance and Transfers of Physical Assets before conveying, assigning or transferring any ownership interest in

the project or any beneficial interest in any trust holding title to the project.

(c) The Mortgagor must obtain the Commissioner's and the lender's written approval before:

(1) Conveying, assigning, transferring, encumbering or disposing of any legal interest in the project, including rents and security deposits;

(2) Engaging, except for natural persons, in any business or activity, including the operation of any other project, or incurring any liability or obligation not in connection with the project.

(d) The Mortgagor may not resign or withdraw from the Project until the lender has approved a substitute Mortgagor.

### **Subpart H—Program Relating to Project Operation**

#### **§ 252.701 General.**

In order to be eligible for the benefit of coinsured financing under this part, the Mortgagor must agree to be regulated and restricted by the lender with respect to the ongoing operation of the project as set forth in this subpart.

#### **§ 252.702 Reserve for replacements and general operating reserve.**

(a) The Mortgagor must establish and maintain a reserve for replacements to cover the cost of major repairs to and replacement of structural elements, mechanical equipment and major movable equipment of the facility. This reserve will be held and administered by the lender only as provided in the regulatory agreement and Commissioner's administrative procedures.

(b) [Reserved]

(c) To the extent consistent with the project's liquidity needs, money placed in a reserve for replacements must be invested in United States Treasury securities, securities issued by a Federal agency, or deposits that are insured by an agency of the Federal Government.

#### **§ 252.703 Charges for facilities and services.**

(a) The Mortgagor will determine charges, taking into account facilities and services offered by the Project.

(b) The Mortgagor may not collect from residents or prospective residents an admission fee, founder's fee, life-care fee, or similar payment pursuant to any agreement, oral or written, whereby the Mortgagor agrees to furnish accommodations or services in the project to persons making such payments.



**§ 252.704 Use of project funds.**

(a) The Mortgagor must deposit all rents and other receipts of the project in the name of the project in accounts that are fully insured as to principal by an agency of the Federal Government. Project funds in excess of these needed to meet short-term project operating expenses may be invested in accordance with the administrative instructions of the Commissioner.

(b) The Mortgagor may use project funds only for:

(1) Payment of Mortgage obligations;  
(2) Payment of reasonable expenses necessary to the proper operation and maintenance of the project;

(3) Deposits to the reserve for replacements and other required reserves;

(4) Repayment of Mortgagor advances authorized by the Commissioner's administrative procedures.

(5) Distributions of Surplus Cash permitted under § 252.705;

(c) The Mortgagor may not use project funds to liquidate liabilities related to the construction of the project, other than the Coinsured Mortgage, unless the lender authorized this use in accordance with the Commissioner's administrative procedures.

(d) The Mortgagor must deposit and maintain residents' security deposits in a trust account separate and apart from all other funds of the Project. The trust account must be held in the name of the Project and the balance in the account must at all times equal or exceed the Project's liability for residents' security deposits. The owner must comply with any State or local laws regarding investment of security deposits and the Distribution of interest or other income earned thereon. Any earnings received from the investment of security deposits must accrue to the benefit of the Project or the Project residents.

**§ 252.705 Distributions and residual receipts.**

(a) The Mortgagor may make, receive or retain Distributions only as provided in this section. The Mortgagor must compute Surplus Cash and Distributions in accordance with the Commissioner's administrative requirements.

(b) *Proprietary Mortgages.* (1) Distributions may be paid only from Surplus Cash that exists as of the end of a semiannual or annual fiscal period.

(2) Initial Distributions may be paid only after construction has been completed and the Mortgagor has submitted the cost certifications required by § 252.402.

(3) No Distribution may be paid from borrowed funds, or when payments due

under the note, Mortgage, or regulatory agreement have not been made.

(4) If any of the conditions listed below applies, the Mortgagor may distribute Surplus Cash only after obtaining the lender's written approval to do so:

(i) The Mortgagor has not satisfactorily responded to any lender or HUD on-site review report, annual financial statement correspondence or any other correspondence that requires the Mortgagor to implement corrective action, and that was received at least 30 days before the end of the fiscal period for which the Surplus Cash computation is made;

(ii) The lender determines and gives the owner written notification that the project has significant uncorrected physical deficiencies; or

(iii) There is a covenant default (as defined in § 252.806(b)) under the provisions of the Mortgage or the regulatory agreement.

(c) *Nonprofit and public mortgages.*

No distributions are permitted on projects owned by nonprofit or public mortgages. (1) Any Surplus Cash generated by such project must be deposited in the Residual Receipts account with the lender within 60 days after the end of each fiscal year in which the Surplus Cash is generated.

(2) Residual Receipts must at all times remain under the control of the lender. The lender must administer the Residual Receipts account in accordance with the Commissioner's administrative requirements.

(3) The lender must invest Residual Receipts in accordance with the administrative requirements of the Commissioner. All earnings on these investments must be added to the Residual Receipts account unless other disposition of such earnings has been approved by the Commissioner, or by the lender in accordance with the Commissioner's administrative requirements.

(4) When the contract of coinsurance is terminated any funds remaining in the Residual Receipts account must be distributed in accordance with the Commissioner's administrative requirements.

**§ 252.706 Project management.**

The Mortgagor must:

(a) Provide for management satisfactory to the lender and the Commissioner, execute a management contract that meets the requirements of the Commissioner, and deliver to the lender such certifications and information regarding project management as the Commissioner and lender may require.

(b) Maintain the project in good repair and condition and promptly complete necessary repairs and maintenance as required by the lender.

(c) Assure that all project expenses are reasonable in amount and necessary to the operation of the project.

(d) Obtain the lender's and the Commissioner's written approval before undertaking self-management, contracting for management services, or paying (or incurring any obligation to pay) fees for management services.

(e) Establish and maintain the Project's books, accounts and records in accordance with the Commissioner's and lender's administrative requirements. Books and accounts must be maintained for such periods of time as the Commissioner may prescribe.

(f) Permit the lender, the Commissioner, the HUD Inspector General, the Comptroller General of the United States, or their authorized agents to inspect the project's property, equipment, buildings, plans, offices, apparatus, devices, books, accounting records, contracts, and documents during reasonable business hours. This right to inspect extends to the records of the Mortgagor, as well as to the records of any companies with which the Mortgagor has an identity of interest, as defined in the regulatory agreement.

(g) Furnish the lender and the Commissioner with a financial report on the project's operations within 60 days following the end of each fiscal year, unless the lender authorizes the Mortgagor to submit the report on a later date. Unless the Commissioner authorizes the lender to accept an unaudited report, the report must be made by an independent certified public accountant or by an independent public accountant licensed by a State or other political subdivision on or before December 31, 1970.

(h) Upon request, furnish the lender with operating budgets; occupancy, accounting and other reports; properly certified copies of minutes of meetings of the directors, officers, shareholders, or beneficiaries of the Mortgagor entity; and specific answers to questions raised from time to time by the lender relative to income, assets, liabilities, expenses, operation, and condition of the project. The Mortgagor must furnish a response to the lender's or HUD's on-site review reports and written inquiries regarding annual or monthly financial statements no later than 30 days after receipt of the lender's report or inquiries.

(i) In advertising accommodations and services and in admitting residents, adhere to civil rights and equal



opportunity requirements set forth in § 252.208.

### Subpart I—Contract Rights and Obligations Mortgage Insurance Premiums

#### § 252.801 MIP in insurance of advances cases.

(a) *Amount of MIP to be collected from the Mortgagor.* (1) Before the initial endorsement of the Mortgage for coinsurance, the lender must collect a MIP from the Mortgagor equal to one percent of the original amount of the Mortgage.

(2) If the date of the first principal payment is more than one year after the date of initial endorsement, the lender must, before each anniversary of the date of initial endorsement that occurs more than 30 days before the first principal payment, collect from the Mortgagor an additional MIP equal to 0.5 percent of the original Mortgage amount.

(3) Before the first principal payment, the lender must collect from the Mortgagor an amount equal to 0.5 percent of the average outstanding principal balance of the Mortgage for the year following the first principal payment.

(4) Beginning with the first principal payment and continuing until the Coinsurance Contract terminates, the lender must collect and place in escrow monthly MIP sufficient to accumulate 0.5 percent of the average principal that will be outstanding during the upcoming year. No adjustments may be made for delinquent payments or prepayments on the Mortgage except as provided in § 252.804.

(5) The MIP required under paragraphs (a) (1) and (2) of this section may be included in the Mortgage. The Mortgagor must pay the MIP required under paragraphs (a) (3) and (4) of this section from its own funds.

(b) *Payment of MIP by the lender.* (1) At initial endorsement, the lender must pay to the Commissioner an initial MIP equal to .65 percent of the original amount of the Mortgage.

(2) If the date of the first principal payment is more than one year after the date of the initial endorsement, the lender must, on each anniversary of the date of initial endorsement that occurs more than 30 days before the first principal payment, pay to the Commissioner an additional MIP equal to 0.5 percent of the original Mortgage amount.

(3) Following final endorsement, the Commissioner will adjust the MIP so that it equals .65 percent per year of the average outstanding principal balance

for the year following the date of initial endorsement plus 0.5 percent per year of the average outstanding principal balance for the period from the first anniversary of initial endorsement to the date of the first principal payment. If the adjusted amount is less than the amount previously paid by the lender, the Commissioner will refund the excess amount to the lender for application to the mortgagor's account.

(4) On the date of the first principal payment and each year thereafter on the anniversary of the date on which the first principal payment was due, and continuing until the Coinsurance Contract is terminated, the lender must pay to the Commissioner a MIP equal to 0.4 percent of the average outstanding principal balance of the mortgage for the 12 months following the date the premium becomes payable. The average outstanding principal balance is computed using the project's amortization schedule. No adjustments may be made for delinquent payments or Mortgage prepayments except as provided in § 252.804.

#### § 252.802 MIP in insurance upon completion cases.

(a) *Amount of MIP to be collected from the Mortgagor.* (1) Before endorsement of the Mortgage for coinsurance, the lender must collect from the Mortgagor a MIP equal to 0.5 percent per year of the average outstanding principal balance of the Coinsured Mortgage from the date of the endorsement to one year after the due date of the first payment to principal.

(2) For each year thereafter, the lender must collect from the Mortgagor monthly MIP sufficient to accumulate and place in escrow 0.5 percent of the average principal balance outstanding during the upcoming year. No adjustments may be made for delinquent payments or prepayments on the Mortgage except as provided in § 252.804.

(b) *Payment of MIP by the lender.* (1) At endorsement, the lender must pay to the Commissioner an initial MIP equal to 0.5 percent of the face amount of the Mortgage. Following endorsement, the Commissioner will adjust the initial MIP so that it equals 0.5 percent per year of the average outstanding balance of the Mortgage from the date of endorsement to one year after the due date of the first payment to principal. If this adjusted amount is more than the amount paid by the lender at endorsement, the Commissioner will bill the lender for the difference. If the adjusted amount is lower than the amount paid by the lender at endorsement, the Commissioner will refund the excess

amount to the lender for application to the Mortgagor's account.

(2) Beginning on the anniversary of the date on which the first principal payment was due and continuing annually thereafter until the Coinsurance Contract is terminated, the lender must pay to the Commissioner a MIP equal to 0.4 percent of the average outstanding principal balance for the 12 months following the date the premium becomes available. The average outstanding principal balance is computed using the project's amortization schedule. No adjustments may be made for delinquent payments or Mortgage prepayments except as provided in § 252.804.

#### § 252.803 Duration and method of payment of MIP.

(a) MIP payments must continue annually until one of the following occurs:

(1) The Mortgage is paid in full;  
(2) A deed to the lender is filed for record; or

(3) The Contract of Coinsurance is otherwise terminated with the consent of the Commissioner.

(b) The lender may pay any MIP required under this part in cash or debentures.

#### § 252.804 Pro rata refund of annual MIP.

If the Coinsurance Contract is terminated by prepayment in full or by termination with the consent of the Commissioner after the due date of the first annual MIP, the Commissioner will refund any MIP paid for the period after the effective date of the termination of insurance. The refund will be mailed to the lender for credit to the Mortgagor's account. In computing the pro rata portion of the annual MIP, the date of termination of coinsurance will be the last day of the month in which the Mortgage is prepaid or the Commissioner receives a termination request. No refund will be made if insurance was terminated because of a default or if termination occurs before the date the first annual MIP is due.

#### § 252.805 Late charges—MIP.

(a) If the Commissioner receives a MIP payment more than 15 days after the later of the billing date or due date, the lender must pay a late charge of four percent of the amount due.

(b) If the Commissioner receives a MIP payment more than 30 days after the later of the billing date or due date, the lender must pay both the four percent late charge and interest. Interest will be charged from the later of the billing date or the due date at a rate set



in conformity with the Treasury Fiscal Requirements Manual.

#### Protection of Mortgage Security

##### § 252.806 Annual physical inspection.

As long as the mortgage is coinsured by the Commissioner, the lender must ascertain the general physical condition of the property at least once in each calendar year. The lender must furnish the Commissioner and the mortgagor a copy of its inspection report, which must contain the lender's recommendations for any corrective actions.

#### Delinquency and Default Under the Mortgage

##### § 252.807 Notice of delinquency.

If the lender has not received the Mortgagor's monthly Mortgage payment by the 16th day of the month in which the payment is due, the lender must give the Commissioner and the mortgagor written notice of the delinquency. This notice must include the information required by the Commissioner's administrative procedures. The lender must mail this notice in time for it to be received by the Commissioner by the 20th day of that month.

##### § 252.808 Definition of default.

(a) A monetary default exists when the Mortgagor fails to make any payment due under the Mortgage.

(b) A covenant default exists when the Mortgagor fails to perform any other covenant under the provisions of the Mortgage or the regulatory agreement, which is incorporated in the Mortgage. A lender becomes eligible for insurance benefits on the basis of a covenant default only after the lender has accelerated the debt and the owner has failed to pay the full amount due, thus converting a covenant default into a monetary default.

##### § 252.809 Date of default.

For purposes of this subpart, the date of default is:

(a) The date of the first uncorrected failure to perform a mortgage covenant or obligation; or

(b) The date of the first failure to make a monthly payment that is not covered by subsequent payments, when such subsequent payments are applied to the overdue monthly payments in the order in which they were due.

##### § 252.810 Notice of default.

If a default (as defined in § 252.808) continues for a period of 30 days, the lender must notify the Commissioner within 30 days thereafter, unless the default is cured. Unless waived by the Commissioner, the lender must submit this notice monthly on a form prescribed

by the Commissioner until the default has been cured, the lender has acquired title to the property, or the coinsurance contract has been terminated.

##### § 252.811 Financial relief to cure a default.

(a) To reinstate a defaulted Mortgage, the lender may use one or more of the forms of financial relief described in this section. The lender's efforts to cure a default will not result in a curtailment of interest as provided by § 252.821(b) in any subsequent claim for insurance benefits, if the lender complies with the conditions set forth in this section and the notice requirements set forth in §§ 252.810 and 252.815. The lender must service delinquent loans in accordance with the Commissioner's administrative requirements.

(1) *Temporary adjustment of Mortgage payments.* Without obtaining the Commissioner's approval, the lender may agree to hold the Mortgage in default and temporarily adjust payments, if a temporary payment plan meets the conditions listed below. The lender may approve a payment plan that does not meet all of these conditions only after obtaining the Commissioner's written approval.

(i) The temporary payment plan will last no longer than 18 months.

(ii) Payments will be set at less than the debt service and escrows required by the Mortgage for no more than six months.

(iii) The plan requires the Mortgagor to pay a specific dollar amount each month toward the Mortgage delinquency, but also gives the lender the right (subject to the Commissioner's administrative requirements) to require that the Mortgagor also apply any net operating income to the Mortgage delinquency.

(iv) The Plan requires the Mortgagor to furnish the lender monthly accounting reports until the Mortgage is reinstated.

(v) The Mortgagor agrees that, even if the project is current under the terms of a temporary payment plan, no distributions will be paid until the Mortgage itself has been brought current and the Mortgagor has complied with all terms of the temporary payment plan and any broader reinstatement plan, including the completion of any maintenance work or management initiatives.

(2) *Withdrawal from the reserve for replacements.* If the Mortgage is more than 25 days delinquent, the lender may withdraw reserve funds without prior Commissioner approval to pay up to one month's debt service and Mortgage escrows. The lender must obtain the Commissioner's written approval for withdrawals that, individually or

cumulatively over a 12-month period, would exceed one month's Mortgage payment.

(3) *Suspension of deposits to the reserve for replacements.* The lender may suspend up to six month's reserve deposits for up to six months during any 36 month period. The lender must obtain the Commissioner's written approval for suspensions in excess of six months during any 36-month period.

(4) *Recasting the Mortgage.* The lender may recast delinquent principal and interest over the remaining Mortgage term so long as the sum of the outstanding principal balance of the Mortgage and the delinquency being recast does not exceed the original Mortgage amount, and the lender obtains the Commissioner's written approval before executing an agreement permanently modifying the terms of the Mortgage.

(b) For any project comprising a GNMA pool, the lender-issuer must continue to pay the securities holders the full amount of scheduled payments due under the securities, even if the lender does not collect the full amount from the Mortgagor.

##### § 252.812 Reinstatement of a defaulted mortgage.

If the Mortgagor cures the default before the completion of any foreclosure proceedings, the insurance will continue as if a default had not occurred. The mortgagor must pay all reasonable expenses that the lender incurs in connection with the foreclosure proceedings. The lender must give written notice of reinstatement to the Commissioner.

#### Termination

##### § 252.813 Termination of coinsurance contract.

(a) The Contract of Coinsurance will terminate if any of the following occurs:

(1) The Mortgage is paid in full;

(2) The lender acquires the Mortgaged property and notifies the Commissioner that it will not make a claim for insurance benefits;

(3) The Mortgagor redeems the property after foreclosure;

(4) A party other than the lender acquires the property at a foreclosure sale;

(5) The Mortgagor and lender jointly request termination and the Commissioner grants approval; or

(6) The lender or its successors or assigns commit fraud or make a material misrepresentation to the Commissioner with respect to the Contract of Coinsurance on the Mortgage.



(b) The Contract of Coinsurance may, at the option of the Commissioner, be terminated in the event of the assignment or transfer of interest of a Coinsured Mortgage which does not meet the requirements of § 252.106.

(c) When the Coinsurance Contract is terminated, all of the rights and obligations of the Mortgagor and the lender, including the obligation to pay MIP, will terminate.

**§ 252.814 Notice and date of termination by Commissioner.**

The Commissioner will notify the lender that the contract of coinsurance on a Mortgage has been terminated and will establish the effective date of the termination. The termination date will be the last day of the month in which any one of the events specified in § 252.813 occurs.

**Claim Procedure and Payment of Insurance Benefits**

**§ 252.815 Notice of election to acquire property and file a claim.**

Unless the Commissioner has given the lender a written extension, the lender must notify the Commissioner of its election to acquire the property and its intention to file a claim for insurance benefits within 75 days of the date of default. The Commissioner will approve an extension of the 75-day deadline if the Commissioner determines that: (a) the lender and the Mortgagor are diligently pursuing reinstatement of the Mortgage, and (b) reinstatement of the Mortgage and resolution of the problems that led to the default are feasible.

**§ 252.816 Acquisition of property.**

Unless the Commissioner has given the lender a written extension, within 30 days after submitting the notice required by § 252.815, the lender must institute action either to foreclose the Mortgage or acquire title to the Mortgaged property through deed-in-lieu of foreclosure. The lender must exercise reasonable diligence in pursuing this action, and must promptly report to the Commissioner any developments that might delay the completion of acquisition. During the period that the lender controls the property, it must adhere to the Commissioner's requirements for project management, as set forth in the regulatory agreement and the Commissioner's administrative procedures.

**§ 252.817 Deed in lieu of foreclosure.**

In lieu of instituting or completing a foreclosure, the lender may acquire the property by voluntary conveyance from the Mortgagor. The lender may accept a deed-in-lieu of foreclosure if:

(a) The Mortgage is in default at the time the deed is executed and delivered;

(b) The credit instrument is cancelled and surrendered to the Mortgagor;

(c) The Mortgage of record is satisfied as a part of the consideration for the conveyance; and

(d) The deed from the Mortgagor conveys marketable title and contains a covenant that warrants against the acts of the grantor and all claims by, through, or under the grantor.

**§ 252.818 Disposition of property and application for insurance benefits.**

(a) After the acquisition of marketable title to the property, the lender must obtain two appraisals of the property performed by independent appraisers. The lender must select the appraisers from a panel approved by the Commissioner. The appraisals must estimate the market value of the property, as of the date of acquisition, for its highest and best use. The higher of the two appraisal values shall be deemed the appraisal value for purposes of this subpart.

(b) After the lender sells the property, or after the end of 12 months from the date of acquisition of title, whichever occurs first, the lender may file a claim for any insurance benefits to which it is entitled under § 252.820. The lender must file the claim no later than 15 days after the sale, or expiration of the 12-month period, whichever is applicable, or Mortgage interest will be curtailed in accordance with § 252.821(b).

(c) The lender must file the claim on a form approved by the Commissioner and must state the sales price and the income and expenses incurred in connection with the acquisition, repair, operation, and sale of the property. The lender must also submit evidence in support of the claim, as prescribed by the Commissioner, including the appraisals required by paragraph (a) of this section, and ledger records and documentation for all accounts relating to the Mortgage transaction.

(d) If the property has not been disposed of at the time of the lender's request for payment, the lender must use the higher of the two appraised values of the property secured in accordance with paragraph (a) of this section in its notification to the Commissioner, in lieu of the sales price.

**§ 252.819 Method of payment.**

The Commissioner will pay insurance benefits in cash, unless the lender files a written request for payment in debentures. In the event that the lender requests debentures, all of the provisions of 24 CFR 207.259(e) will apply, except that the debentures will be

dated as of the date of settlement of the claim.

**§ 252.820 Amount of payment.**

(a) The basis for the computation of insurance benefits will be:

(1) The principal balance of the Mortgage unpaid as of the date of the institution of foreclosure proceedings or the date of acquisition of the property by deed-in-lieu of foreclosure;

(2) Plus all items set forth in § 252.821;

(3) Less all items set forth in § 252.822.

(b) The Commissioner will pay insurance benefits equal to 85 percent of the amount computed under paragraph (a) of this section if the lender:

(1) has obtained no insurance of its coinsurance risk,

(2) has insured 50 percent or less of its coinsurance risk or

(3) is a State Housing Agency eligible as a lender under § 203.7(c) of this chapter that obtained reinsurance from an authorized public mortgage insurer for any portion or all of its coinsurance risk, where the Commissioner finds an identity of interest exists between the State Housing Agency and the public mortgage insurer.

(c) The Commissioner will pay insurance benefits equal to 72.25 percent of the amount computed under paragraph (a) of this section if the lender has obtained insurance for either more than 50 percent of its coinsurance risk or that portion of its coinsurance risk that equals the maximum amount that the insurer is authorized to insure.

(d) This paragraph sets forth the amount of coinsurance benefits to be paid when the amount of reinsurance obtained by the lender changes. If reinsurance is increased after initial or final endorsement, HUD's insurance benefits will be reduced accordingly. HUD's insurance benefits will not be increased if reinsurance is reduced or cancelled after final endorsement.

**§ 252.821 Items included in payment.**

In computing insurance benefits, the following items will be added to the amount described in § 252.820(a)(1):

(a) The amount of all payments that the lender made from its own funds and not from project income for:

(1) Taxes, special assessments, and water bills that are liens before the Mortgage;

(2) Fire and hazard insurance on the property; and

(3) Any Mortgage insurance premiums paid after the date of default. However, HUD will not reimburse the lender for any interest, late charge or other penalties imposed because of the



lender's failure to make the required payments when due.

(b) An amount equivalent to Mortgage interest on the unpaid principal balance of the Mortgage on the date the lender initiated foreclosure proceedings or on the date the lender acquired title to the property through deed-in-lieu of foreclosure. This interest will be payable from the date of default to the date of payment of the insurance benefits. However, if the lender fails to meet any of the requirements of §§ 252.810, 252.815, 252.816, or 252.818(b), within the specified time (including any permissible extension of time), the accrual of interest allowance on the cash payment will be curtailed by the number of days by which the required action was late.

(c) An amount not in excess of two-thirds of the costs actually paid by the lender and approved by the Commissioner of acquiring the property. These costs may not include loss or damage resulting from the invalidity or unenforceability of the Mortgage lien or the unmarketability of the Mortgagor's title.

(d) Reasonable payments that the lender made from its own funds and not from project income for:

(1) Ordinary and necessary preservation, operation and maintenance of the property;

(2) Repairs necessary to meet the objectives of the HUD minimum property standards, those required by local law, and additional repairs that HUD specifically approved in advance; and

(3) Ordinary and necessary expenses in connection with the sale of the property.

#### § 252.822 Items deducted from payment.

In computing insurance benefits, the following items will be deducted from the amount described in § 252.820(a)(1):

(a) An amount equal to five percent of the outstanding principal balance of the Mortgage on the date the lender instituted foreclosure proceedings or acquired title to the property through deed-in-lieu of foreclosure;

(b) All amounts received by the lender on account of the Mortgage after the institution of foreclosure proceedings or the acquisition of the property through deed-in-lieu of foreclosure after default, and any other reimbursement to the lender, other than under the Coinsurance Contract;

(c) All cash or funds related to the mortgaged property that the lender holds (or to which it is entitled) including deposits and escrows made for the account of the Mortgagor. However, for any Mortgage comprising a

GNMA pool, this deduction must exclude any funds in the lender-issuer's custodial accounts and collateral funding a GNMA Deposit Agreement relating to the lender-issuer loss exposure during the GNMA Indemnity Period;

(d) The amount of any undrawn balance under a letter of credit that the lender accepted in lieu of a cash deposit for an escrow agreement;

(e) Any net income from the Mortgaged property that the lender received after the date of default;

(f) The proceeds from the sale of the project or the appraised value of the project as provided in § 252.818, as follows:

(1) If the lender disposes of the Project through a negotiated sale, the amount deducted will be the higher of the sales price or the appraised value;

(2) If the lender disposes of the project through a competitive bid procedure approved by the Commissioner, the amount deducted will be the sales price, even if it is lower than the appraised value.

(3) If the lender has not disposed of the project within 12 months from the date of acquisition, the amount deducted will be the appraised value; and

(g) Any and all claims that the lender has acquired in connection with the acquisition and sale of the property. Claims include but are not limited to returned premiums from cancelled insurance policies, interest on investments of reserve for replacement funds, tax refunds, refunds of deposits left with utility companies, and amounts received as proceeds of a receivership.

#### § 252.823 [Reserved]

#### Remedies for Default by a Lender-Issuer Under the Government National Mortgage Association (GNMA) Mortgage-Backed Securities Program

##### § 252.824 Indemnification of GNMA.

(a) If, after the Commissioner pays a coinsurance claim, the lender-issuer fails to pay the full amount owed to a holder of securities guaranteed by GNMA and backed by a coinsured loan, the Commissioner will reimburse the Association for the amount the Association must pay securities holders as a result of the lender's default in payment.

(b) This amount will not exceed 25 percent or 37.75 percent (whichever is appropriate) of the amount computed under § 252.820, plus the amount referenced in § 252.822(a). The Commissioner will make payment in cash. After payment by the Commissioner, the lender-issuer will

have no claim against the Commissioner for any such funds.

##### § 252.825 Withdrawal of lender approval.

If the Commissioner is required to make payments to GNMA because of the lender-issuer's failure to pay any amount owed to a holder of GNMA securities backed by a Coinsured Mortgage, the Commissioner may request that the Mortgagee Review Board withdraw approval of the lender-issuer as HUD-approved Mortgagee, under the provisions of Part 25 of this title.

##### § 252.826 HUD recourse against lender-issuer.

If the Commissioner is required to make payments to GNMA because of the lender-issuer's failure to pay any amount owed to a holder of GNMA securities backed by a Coinsured Mortgage, the lender-issuer will be liable for reimbursing the Commissioner for the payments.

##### § 252.827 GNMA right to assignment.

If the lender-issuer defaults on its obligations under the GNMA Mortgage-Backed Securities Program, GNMA will have the right, notwithstanding the requirements of § 252.106, to cause all Coinsured Mortgages held in GNMA pools by the defaulting coinsuring lender-issuer to be assigned to another GNMA-approved coinsuring lender-issuer or to itself.

(a)(1) For any Coinsured Mortgage that is not in default and is held by a defaulting lender-issuer, GNMA will first attempt to have the Mortgage assigned to another eligible coinsuring lender by soliciting offers to assume the defaulting lender-issuer's rights and obligations under the Mortgage from those eligible coinsuring lenders that are indicated on a periodically updated listing furnished to GNMA by the Commissioner and that are also GNMA issuers.

(2) If GNMA rejects all offers or no offers are received, GNMA will have the right to perfect an assignment of the Mortgage to itself.

(b) For any Coinsured Mortgage that is in default and held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the Coinsured Mortgage directly to itself before extinguishing the Mortgage by completion of foreclosure action or acquisition of title by deed-in-lieu of foreclosure.

(c) GNMA, as assignee, will give the Commissioner written notice within 30 days after taking a Mortgage by assignment in accordance with this



section, in order to allow an appropriate endorsement and necessary changes in the Commissioner's records.

(d) The Commissioner will endorse any Mortgage assigned to GNMA as provided by this section for full insurance effective as of the date of assignment in accordance with the appropriate provisions of 24 CFR Part 232. Any future insurance claim by GNMA or any assignment of the fully insured Mortgage will be governed by the appropriate provisions of 24 CFR Part 232, except that any payment will be made in cash instead of debentures.

**§ 252.828 GNMA right to claim coinsurance benefits after lender-issuer's acquisition of title.**

(a) If, as a result of a default by a lender-issuer on its obligations under the GNMA Mortgage-Backed Securities (MBS) program, GNMA must pay any amount owed to a securities holder, GNMA as substitute lender-issuer shall be entitled to file a claim for and to receive coinsurance benefits in accordance with this subpart. GNMA may file a claim with the Commissioner immediately upon its declaration of the lender-issuer's default under the GNMA MBS program, if the defaulting lender-issuer has acquired legal title to property previously covered by a coinsured mortgage ("coinsured property") but has not received coinsurance benefits under this subpart, and if the defaulting lender-issuer cannot or will not convey legal title to the coinsured property to GNMA. Such a claim may be filed by GNMA notwithstanding the requirements of § 252.818(b) that claims be submitted after the sale of the coinsured property or the expiration of 12 months from the acquisition of title. The claim shall be based upon property appraisals obtained by the lender-issuer at the time of acquisition of title, or, in the absence of such appraisals, upon appraisals obtained by GNMA after default of the lender-issuer. The lender-issuer will have no claim against the Commissioner for any payment pursuant to this section.

(b) If, as a result of the lender-issuer's default, the full amount paid by GNMA to one or more securities holders exceeds the amount of coinsurance benefits paid by the Commissioner to GNMA under paragraph (a) with respect to the Coinsured Mortgage that backed the securities, then the Commissioner shall reimburse GNMA for such additional amount in accordance with § 252.824(b).

(c) For any Coinsured Mortgage that is to be included in a GNMA MBS pool, GNMA shall obtain an assignment by

contract of any future right of the lender-issuer to collect coinsurance benefits on the Coinsured Mortgage following the lender-issuer's acquisition of legal title to the underlying coinsurance property on behalf of securities holders and GNMA. Such assignment shall become effective upon default by any lender-issuer after its acquisition of legal title to the coinsured property.

(d) If the lender-issuer is unable or unwilling to transfer legal title to the coinsured property promptly to GNMA, GNMA shall take all necessary and appropriate action to obtain legal title to it. Upon receipt of legal title, GNMA shall convey the coinsured property to the Commissioner. In the event GNMA cannot acquire legal title, GNMA shall transfer to the Commissioner any other rights or interests it possesses in the coinsured property.

(e) GNMA shall reimburse the Commissioner in an amount not to exceed the amount of any payment by the Commissioner to GNMA under paragraph (a) if the Commissioner is required to pay coinsurance proceeds under this subpart to any party other than GNMA with respect to the Coinsured Mortgage.

**Subpart J—Coinsurance of Mortgages Covering Existing Projects**

**§ 252.901 Mortgages covering existing insured projects eligible for coinsurance.**

Notwithstanding the generally applicable requirement that mortgages coinsured under this part be limited to Projects to be constructed or substantially rehabilitated after commitment for coinsurance, a mortgage executed in connection with the purchase or refinancing of an existing Project covered by a mortgage insured by the Commissioner may be coinsured under this subpart pursuant to section 223(f) of the Act. A mortgage coinsured pursuant to this subpart shall meet all other requirements of this part except as expressly modified by this subpart.

**§ 252.902 Eligible project.**

(a) Notwithstanding the requirements set forth in § 252.201, existing Projects covered by a mortgage insured by the Commissioner (with such repairs and improvements as are determined by the lender to be necessary) are eligible for coinsurance under this subpart. The Project must not require substantial rehabilitation as defined in § 252.3 and three years must have elapsed from the date of completion of construction or substantial rehabilitation of the Project, or from the beginning of occupancy, whichever is later, to the date of application for coinsurance. In addition:

(b) The Project must presently be at sustaining occupancy (occupancy that would produce income sufficient to pay operating expenses, annual debt service and reserve fund for replacement requirements) as determined by the coinsuring lender, before endorsement of the Project for coinsurance; alternatively, the mortgagor must provide an operating deficit fund at the time of endorsement for coinsurance, in an amount, and under an agreement, approved by the coinsuring lender in accordance with standards established by the Commissioner.

**§ 252.903 Maximum mortgage limitations.**

Notwithstanding the maximum mortgage limitations set forth in § 252.203, a mortgage within the limits set forth in this section shall be eligible for coinsurance under this subpart.

(a) *Value limit.* The coinsured mortgage shall involve a principal obligation of not in excess of eighty-five percent (85%) of the coinsuring lender's estimate of the value of the Project, including major movable equipment to be used in its operation and any repairs and improvements. The coinsuring lender's estimate of value shall result from consideration of:

- (1) Estimated market value of the Project by capitalization,
- (2) Estimated market value of the Project by direct sales comparison, and
- (3) Total estimated replacement cost of the Project.

In the event the mortgage is secured by a leasehold estate rather than a fee simple estate, the value of the property described in the mortgage shall be the value of the leasehold estate (as determined by the lender) which shall in all cases be less than the value of the property in fee simple.

(b) *Debt service limit.* The coinsured mortgage shall involve a principal obligation not in excess of the amount that could be amortized by eighty-five percent (85%) of net projected Project income available for payment of debt service. Net projected Project income available for payment of debt service shall be determined by reducing the coinsuring lender's estimated gross income for the Project by a vacancy and collection loss factor and by the cost of all estimated operating expenses, including deposits to the reserve for replacements and taxes, and by the return attributable to business operations.

(c) *Project to be refinanced—additional limit.* In addition to meeting the requirements of paragraphs (a) and (b) of this section, if the Project is to be refinanced by the coinsured mortgage



(i.e., without a change of ownership or with the Project sold to a purchaser who has an identity of interest as defined by the Commissioner with the seller with the purchase to be financed with the coinsured mortgage), then the maximum mortgage amount must not exceed the cost to refinance the existing indebtedness, which will consist of the following items, the eligibility and amounts of which must be determined by the coinsuring lender:

- (1) The amount required to pay off the existing indebtedness;
- (2) The amount of the initial deposit for the reserve fund for replacements;
- (3) Reasonable and customary legal, organizational, title, and recording expenses, including lender fees under § 252.206;

- (4) The estimated repair costs, if any;
- (5) Architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees.

(d) *Project to be acquired—additional limit.* In addition to meeting the requirements of paragraphs (a) and (b) of this section, if the Project is to be acquired by the mortgagor and the purchase price is to be financed with the insured mortgage, the maximum amount must not exceed eighty-five percent (85%) of the cost of acquisition as determined by the lender. The cost of acquisition shall consist of the following items, to the extent that each item (except for item numbered (1)) is paid by the purchaser separately from the purchase price. The eligibility and amounts of these items must be determined in accordance with standards established by the Commissioner.

- (1) Purchase price as indicated in the purchase agreement;
- (2) An amount for the initial deposit to the reserve fund for replacements;
- (3) Reasonable and customary legal, organizational, title, and recording expenses, including mortgages fees under § 255.206;
- (4) The estimated repair cost, if any;
- (5) Architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees.

#### § 252.904 Term of the mortgage.

Notwithstanding the provisions of § 252.205, a mortgage coinsured under this subpart must have a maturity satisfactory to the coinsuring lender, which is not less than 10 years, nor more than the lesser of 35 years or 75 percent of the estimated remaining economic life of the physical improvements. The term of the mortgage will begin on the first day of the second month following the date of endorsement of the mortgage for coinsurance.

#### § 252.905 Labor standards and prevailing wage requirements.

The provisions of §§ 252.209 and 252.301(e) of this part shall not apply to mortgages coinsured under commitments issued in accordance with this subpart.

#### § 252.906 Processing and commitment.

Except where otherwise specified in this section, the provisions of § 252.302 shall not apply to mortgages coinsured under this subpart.

(a) After acceptance of an application for a commitment to coinsure, the coinsuring lender will determine the maximum coinsurable Mortgage, review any list of repairs for compliance with HUD standards, determine the acceptability of the proposed management agent, and make other determinations necessary to assure acceptability of the proposed Project. The lender must make these determinations in the manner prescribed by the Commissioner.

(b) Paragraph (b) of § 252.302 applies to mortgages coinsured under this subpart.

(c) Paragraph (c) of § 252.302 applies to mortgages coinsured under this subpart.

(d) An application may be made for a commitment that provides for the coinsurance of the mortgage after completion of repairs and improvements or for a commitment that provides, in accordance with standards established by the Commissioner, for the completion of specified repairs and improvements after endorsement.

#### § 252.907 Payment of MIP by Mortgagor and lender.

(a) *Amount of MIP to be collected from the Mortgagor.* (1) Before endorsement of the Mortgage for coinsurance, the lender must collect from the Mortgagor an initial MIP which shall not exceed the sum of one percent per year of the average outstanding principal balance of the Coinsured Mortgage, calculated from the date of endorsement for Coinsurance to one year after the due date of the first payment to principal.

(2) For each year thereafter, the lender must collect from the Mortgagor and place in escrow monthly MIP sufficient to accumulate 0.5 percent of the average principal balance outstanding during the upcoming year. No adjustments may be made for delinquent payments or prepayments on the Mortgage, except as provided in § 252.804.

(b) *Payment of MIP by the lender.* (1) At endorsement, the lender must pay to the Commissioner an initial MIP equal to 0.65 percent of the face amount of the Mortgage. Following endorsement, the

Commissioner will adjust the initial MIP so that it equals 0.65 percent per year of the average outstanding balance of the Mortgage from the date of endorsement to one year after the due date of the first payment to principal. If this adjusted amount is more than the amount paid by the lender at endorsement, the Commissioner will bill the lender for the difference. If the adjusted amount is lower than the amount paid by the lender at endorsement, the Commissioner will refund the excess amount to the lender for application to the Mortgagor's account.

(2) Beginning on the anniversary of the date on which the first principal payment was due and continuing annually thereafter until the Coinsurance Contract is terminated, the lender must pay to the Commissioner a MIP equal to 0.4 percent of the average outstanding principal balance for the 12 months following the date the premium becomes available. The average outstanding principal balance is computed using the project's amortization schedule. No adjustments may be made for delinquent payments, or Mortgage prepayments, except as provided in § 252.804.

### PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

7. The authority citation for 24 CFR Part 255 continues to read as follows:

Authority: Secs. 211 and 244, National Housing Act (12 U.S.C. 1715b and 1715z-(9); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

8. 24 CFR Part 255 is amended by adding a new undesignated center heading and new § 255.806 to read as follows:

#### Protection of Mortgage Security

##### § 255.806 Annual physical inspection.

As long as the mortgage is coinsured by the Commissioner, the lender must ascertain the general physical condition of the property at least once in each calendar year. The lender must furnish the Commissioner and the mortgagor a copy of its inspection report, which must contain the lender's recommendations for any corrective actions.

9. Section 255.819 is revised to read as follows:

##### § 255.819 Method of payment.

The Commissioner will pay insurance benefits in cash, unless the lender files a written request for payment in debentures. In the event that the lender requests debentures, all of the



provisions of 24 CFR 207.249(e) will apply, except that the debentures will be dated as of the date of settlement of the claim.

10. Section 255.822 is amended by revising the introductory text and paragraph (f) introductory text to read as follows:

**§ 255.822 Items deducted from payment.**

In computing insurance benefits, the following items will be deducted from the amount described in § 255.820(a)(1):

\* \* \* \* \*

(f) The proceeds from the sale of the project, or the appraised value of the

project as provided in § 255.818 as follows:

\* \* \* \* \*

11. Section 255.824(b) is revised to read as follows:

**§ 255.824 Indemnification of GNMA.**

\* \* \* \* \*

(b) This amount will not exceed 15 percent or 27.75 percent (whichever is appropriate) of the amount computed under § 255.820, plus the amount computed under § 255.822(a), except that, in the case of mortgages for which insurance benefits are payable under

§ 255.823, the amount will not exceed 10 percent of the unpaid principal balance and 10 percent of the interest arrears under the mortgage determined under § 255.823(b). The Commissioner will make payment in cash. After payment by the Commissioner, the lender-issuer will have no claim against the Commissioner for any such funds.

Date: August 5, 1988.

Thomas T. Demery,  
Assistant Secretary for Housing-Federal  
Housing Commissioner.

[FR Doc. 88-19535 Filed 8-30-88; 8:45 am]

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**Wednesday  
August 31, 1988**

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**Part VI**

**Department of  
Health and Human  
Services**

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**Office of Human Development Services**

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**45 CFR Parts 1321, 1326 and 1328  
Grants for State and Community  
Programs on Aging; and Grants to Indian  
Tribes and Organizations Serving Older  
Native Hawaiians for Supportive and  
Nutrition Services; Final Rules**



# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Office of Human Development Services

### 45 CFR Parts 1321, 1326 and 1328

#### Grants for State and Community Programs on Aging; and Grants to Indian Tribes and Organizations Serving Older Native Hawaiians for Supportive and Nutrition Services

**AGENCY:** Administration on Aging (AoA), Human Development Services Office, HHS.

**ACTION:** Final rules.

**SUMMARY:** The Administration on Aging (AoA) is issuing final regulations for Part 1321 for grants to State and Community programs on aging, redesignating former Part 1328 for grants to Indian Tribes and organizations as Part 1326, and adding a new Part 1328 for grants to Native Hawaiians. The basis for these changes is the passage of Pub. L. 100-175 (the Older Americans Act Amendments of 1987), comments on the AOA Notice of Proposed Rulemaking (NPRM) published on March 29, 1988 (53 FR 10107), and the Department's commitment to regulatory reform.

These rules implement Titles III and VI of the Older Americans Act, including the amendments to the Act which modify the current program. The changes emphasize the strengthened roles of the State and area agencies on aging in the development of community-based systems of services.

**DATE:** The final regulations are effective on August 31, 1988.

**FOR FURTHER INFORMATION CONTACT:** Frederick Luhmann, Office of State and Tribal Programs, Administration on Aging, Room 4739, 330 Independence Ave., SW., Washington, DC 20201, (202) 245-0011.

#### SUPPLEMENTARY INFORMATION

##### Background

The Older Americans Act was first enacted in 1965. The President signed the Older Americans Act Amendments of 1987 (Pub. L. 100-175) on November 29, 1987. The Act was amended eleven times between 1965 and 1987.

As first enacted, the Act authorized funding under Title III to support in each State a State Agency on Aging. Title III also provided funds for each State agency to initiate local community projects to provide social services to older persons.

In 1972, a new Title VII was enacted which authorized funds for local

community projects to provide nutrition services to the elderly. The projects were designed to provide persons aged 60 and older with at least one hot nutritious meal five or more days a week. In 1973, the amendments revised the Title III State Grant Program by requiring the State agency to: (1) Divide the entire State into planning and service areas, (2) determine in which areas an area plan would be developed, and (3) designate an area agency on aging to develop and administer the plan in each area. The 1973 amendments also added a new Title V to the Act which authorized the Commissioner to make grants directly to local community agencies to pay part of the cost of the construction, acquisition, renovation, alteration, or initial staffing of facilities for use as a multipurpose senior centers.

The 1978 amendments consolidated under Title III the social services, nutrition services, and multipurpose senior center programs formerly authorized under Titles III, V and VII. This consolidation was designed to eliminate duplicative and overlapping functions that had been conducted under each Title. It also reemphasized the concept of a single focal point for service delivery within each community. The 1978 amendments enacted a new Title VI, a direct grant program to Indian tribal organizations for older Indians. The 1981 amendments made several technical amendments to the Act and reinforced the basic direction established under the 1978 amendments. Most of the changes expanded the capacity of State agencies, area agencies and tribal organizations through increased administrative flexibility.

The 1984 amendments included a number of changes in the various service programs under Title III, including provisions to increase further the ability of States to transfer funds between their separate allotments for supportive and nutrition services; to specify particular attention to the needs of low-income minority older persons; to require area agencies to conduct activities to facilitate coordination of community-based long-term care services; and to strengthen the long-term care ombudsman program. In addition, the 1984 amendments modified the manner in which funds for State administration are allocated to State agencies on aging, specified a statutory limitation on the amount of funds which could be used for administration of Title V, and created a new title for health education and training activities for older persons.

In 1986, legislation increased the authorization of appropriations for the

United States Department of Agriculture (USDA) cash and commodity subsidy program for fiscal years 1985-87 and set the level of reimbursement at 56.76 cents for each meal served under Title III for each of those years. The 1987 amendments removed the former provision under which the USDA reimbursement rate was related to changes in the Consumer Price Index. A new fixed reimbursement rate was established for the four year authorization created by the 1987 amendments.

The 1987 amendments provide a strong basis for Older Americans Act supported activities that are responsive to the complex and changing environment which is emerging with the aging of American society. With enactment of these amendments, the Act continues to underscore the collaborative efforts that are needed to ensure that every community in this nation provides the opportunity for individuals to live and mature with dignity and independence. The reauthorized Act reaffirms expectations that AoA, State agencies on aging and area agencies on aging provide leadership at their respective levels and work to establish strong partnerships with other public, private and voluntary sector organizations to assure that the nation is responding to the challenge of an aging society. The role of the State agency on aging is reinforced as the developer of policies and procedures to guide and direct area agencies. The amendments also further enhance the role of the area agency on aging as an advocate on behalf of the elderly and catalyst for ensuring the existence of community-based systems of services for older persons in every community in the planning and service area.

The 1987 amendments authorize the initiation of a number of activities including the establishment in the Administration on Aging of an Office for American Indian, Alaskan Native and Hawaiian Native Programs headed by an Associate Commissioner responsible for Title VI and for chairing an interagency task force related to older Indians. The amendments also establish a separate Title VI-B program of grants for supportive and nutritional services to older Hawaiian Natives. Under Title III, the amendments create: A new Part D to support non-medical in-home services for frail older persons; a new Part E providing grants to States to assist them in meeting special needs of older persons; a new Part F supporting preventive health services for the elderly; and a new Part G providing grants to States for programs to prevent



abuse, neglect and exploitation of older individuals. The new amendments require each State to establish an Office of State Long-Term Care Ombudsman. The Commissioner on Aging is required to conduct a study of the ombudsman program and report to Congress on the findings and recommendations of the study.

#### Written Comments

During the 60 day comment period following publication of the NPRM, we received over 700 letters; however, only one joint letter from members of Congress and a few other letters addressed the Title VI program. All of the other comments pertained to Title III programs. The numbers of letters received were: Members of Congress (12), national organizations (15), State units on aging (43), State human services agencies (3), Area agencies on aging (184), community service provider agencies (237), and individuals (191). Many of the letters supported the changes which were proposed in order to strengthen the development of community based services. However, a number of commenters indicated that there are provisions in current regulations which we proposed to delete and which they wish to see retained.

As a result of the comment review process, a number of regulatory sections were revised or added. Changes were made in areas where we believed that such changes met a compelling Federal interest and/or were necessary to maintain the integrity of the Title III programs.

#### Discussion of Comments and Changes Made From the NPRM

##### Section 1321.3 Definitions.

Commenters most frequently raised questions about the definition proposed for "direct services." Several comments were received about the definition for in-home services and severe disability. Single comments were offered about the following other terms, some of which were not included in the NPRM: greatest social need, means test, periodic, official duties, reservation, rural and significant population.

Typical of the comments offered about the definition of "direct services" was that it was both too vague and too broad. Some commenters stated that all activities of area agencies benefit older persons and, thus, would be precluded by the proposed definition. Some commenters also indicated that they understood the definition to prevent area agencies from providing any direct services, although in the view of these commenters it would be appropriate for

area agencies to engage in such activities as case management or information and referral.

A few commenters made suggestions about the proposed definition of "in-home services." One commenter suggested that the definition be restricted to Part D since this would permit a fuller range of in-home support services to be offered through Part B. Another commenter requested the removal of the \$150 limit on home modifications which was included in the proposed definition.

One commenter requested the inclusion of the complete language of the statute in the definition of "severe disability" so it is clear that individuals with lifelong mental and/or physical disabilities are covered.

**AoA Response:** We agree that the proposed definition of "direct service" was too broad. Therefore, we have modified the definition in these final regulations to sharpen the intended meaning. The definition neither permits nor precludes area agencies from engaging in such activities; it simply describes what activities constitute direct services. The determination as to whether or not it is appropriate for an area agency to engage in any form of direct service is a responsibility which section 307(a)(10) of the Older Americans Act assigns to the State agency on aging.

We considered the comments offered about the definition of "in-home service"; but concluded that there was merit for reporting, and other purposes, in having a common definition of in-home services for both Part B and Part D. The \$150 limit on home modifications is required by section 342(1)(E) of the Act; and, therefore, we could not change it.

The definition of "severe disability" has been modified to include the statutory reference in section 102(9) of the Act to mental and/or physical disability.

One commenter who addressed the definition of "reservation" requested that we include the word "former" in the definition when referring to reservations in Oklahoma. We have made that change. Another commenter stated that the proposed definition of "significant population," as it applied to section 306(a)(6)(N) of the Act, was too restrictive because it was based solely on the number of Indians a tribal organization must represent (that is 50 older Indians) in order to be eligible for a Title VI grant. The commenter indicated that the term could have different meanings in various parts of the nation. We accepted the idea that flexibility should be permitted in

defining the term. Therefore, we have not included a standard definition in these rules. However we expect State policies to address this matter. Accordingly, we have added a State plan assurance requiring this at § 1321.17(b)(15). The remaining comments suggested that additional terms be defined; but we determined that no additional definitions are necessary.

##### Section 1321.7 Mission of the State agency.

Many commenters were supportive of the fact that the proposed regulations included for the first time clear mission statements for the State and area agencies on aging. A few commenters, however, believed that the discussion of State agency responsibilities found in the Act was adequate, and that a further discussion of State agency mission was not required. A significant number of area agencies who commented on this section, and some Members of Congress, objected to any reference to area agencies on aging as "agents of the State agency." A concern also was expressed by some that the term "agents" might have inappropriate connotations of legal liability. A number of commenters requested that the term "agents" be deleted; others requested that the term "partners" be used to describe the relationship between the State agency and area agencies.

**AoA Responses:** The term "agents" was intended to convey the fact that under the Older Americans Act it is the responsibility of the State agency on aging to designate area agencies to carry out within specific planning and service areas the statutory functions and responsibilities necessary to foster the development in communities throughout the State of comprehensive systems of services for older persons. The State agency has the overall statewide responsibility to assure that such systems are developed in each community and designates area agencies for the purpose of carrying out the State agency mission in designated geographic areas of the State. However, because of the concern expressed about the term "agents of the State," we have revised § 1321.7(b) to delete the term "agents" and to express more clearly the purpose for which area agencies are designated by the State agency. We also deleted the term "agent" from § 1321.1(c) where it had appeared in the proposed rules. This revision is intended to more clearly reflect that the State agency provides overall policy and program guidance. Area agencies have



flexibility to carry out their mission within that framework.

*Section 1321.9 Organization and staffing of the State agency.*

One Member of Congress expressed concern that proposed regulations did not prohibit the designated State agency on aging from directly operating the ombudsman program when that agency also has responsibility for licensing or certifying long-term care services. The commenter noted that AoA has chosen to interpret the statute as prohibiting the ombudsman function from being located in the same agency as the licensing and certification function only when the ombudsman program is contracted to another agency or organization. The concern of the commenter was that every appearance of conflict of interest related to the ombudsman program should be avoided; and that the potential for such an appearance of conflict of interest existed when the State agency on aging also had responsibilities related to licensing and certification.

*AoA Response:* We are sensitive to the concern expressed that the operation of the ombudsman program be free from even the slightest appearance of conflict of interest. Nevertheless, given the structure of section 307(a)(12)(A) of the Act, we believe that we have no alternative but to reaffirm our interpretation that the statutory constraint on operation of the ombudsman program by an agency which also has licensing and certification responsibilities does not extend to the State agency on aging. We agree, however, that in those situations where the State agency on aging also has responsibilities for licensing and certification, special care must be taken and consideration given to assure the protection of the ombudsman program from even a hint of conflict of interest. We believe that the policies which the State agency develops under § 1321.11 of these regulations provide the means to achieve this goal. Those policies must provide strong measures to guarantee the integrity of the ombudsman program on every point intended by the Congress. In these final regulations, we are requiring that State policies be developed in consultation with appropriate parties within the State. It is our expectation that in the development of policies governing the ombudsman program there will be full and ample discussion of the issue of conflict of interest and that the policies developed by each State will contain clear and explicit provisions to prevent any such situation from arising, or if it did, to

assure appropriate and timely action to correct any abuse of this nature.

*Section 1321.11 State agency policies.*

Comments were received from a relatively small number of States and national aging organizations on this section. Several commenters supported the concept that States should be responsible for the development of State policies, particularly for the ombudsman program. Comments from a few States were supportive of AoA's proposal to delete the provision prohibiting the State agency from requiring the area agencies on aging to submit to it subgrants or contracts for prior review or approval. Area agencies on aging were strongly against deleting this prohibition on prior review and approval authority of the States. Many area agencies expressed the belief that State agencies, if free to mandate prior review and approval, would politicize the decision-making process with regard to subgrants and contracts.

*AoA Response:* We have included language to the effect that State policies governing Title III programs are to be developed in consultation with other appropriate parties in the State. We have given careful consideration to the comments regarding deletion of the prohibition against prior review and approval by the State agency. AoA is not imposing a requirement that States now begin to review and approve subgrants and contracts by their area agencies on aging. Neither are we prohibiting the States from developing such a requirement. We recognize the State's responsibility for developing rules and guidelines in this area. In deleting this provision from the current regulations, AoA is adhering to the principle of providing maximum flexibility to State governments to respond to the needs of their respective populations.

*Sections 1321.13 Advocacy responsibilities and 1321.61 Advocacy responsibilities of the area agency.*

Several commenters indicated concern about language in the existing regulations (§§ 1321.33(b) and 1321.65(b)), which are carried over to §§ 1321.13(b) and 1321.61(d) in the proposed regulations, and which they believe unjustifiably restricts lobbying and other political advocacy activities by State and area agencies on aging. Several State agencies, Members of Congress, and national organizations, expressed concern that we either clarify or delete language stating that "no requirements in this section shall be deemed to supersede statutory or other regulatory restrictions regarding

lobbying or political advocacy with Federal funds." Commenters pointed out that this provision appears not only to be contrary to the intent of Congress, but also to contradict policies stated in this same section that give State agencies the responsibility to review, monitor, evaluate and comment on Federal, State and local programs, laws, policies and other actions which affect or may affect older individuals.

*AoA Response:* We revised the language which had appeared in proposed §§ 1321.13(b) and 1321.61(d) to reflect more precisely our intent with regard to lobbying or other political advocacy by State and area agencies on aging. The revised language appears in §§ 1321.13(b) and 1321.61(d).

*Section 1321.17 Content of State plan.*

By far the greatest number of comments received on this section of the proposed rules focused not on what was in the proposed rule, but what was proposed to be deleted from the existing regulations. A large number of commenters, including: Some Members of Congress, the national associations representing State and area agencies, some individual State agencies, and all area agencies who addressed this point, opposed the proposed deletion of existing § 1321.9(e)(5). That section permits a State agency to approve the use by area agencies of Part B service funds for program development and coordination, provided that the State agency first spends 8.5 percent (now 10%) of its total combined supportive and nutrition services for the administration of area plans. On the other hand, a large number of service providers wrote in favor of the deletion on the basis that it would free up scarce service funds for needed services to older persons. Our reason given in the NPRM for proposing to delete this provision was that the 1987 amendments to the Act increased the amount of funding available for administration of area plans from 8.5 to 10 percent of the State's allotments for services. Also, the 1987 amendments added new Parts to the Act, such as Part D for in-home services, which provided a broader basis upon which the 10 percent could be computed. We, therefore, felt that the existing authority for area agencies to use service funds for program development and coordination was no longer necessary or appropriate.

The most common reason offered by commenters for retention of the existing rule was that the increase from 8.5 to 10 percent for area plan administration was inadequate to offset the amount of funds currently used for program



development and coordination. Commenters also contended that the 1987 amendments to the Older Americans Act added significant new responsibilities for area agencies and that continued use of service funds for program development and coordination was necessary to properly carry out these responsibilities.

**AoA Response:** Because of the strong sentiments expressed about the proposal to delete the program development and coordination authority, we conducted a survey of State agencies to obtain a clearer perception of the extent to which services funds currently are used for program development and coordination. Our findings indicated that 23 State agencies permit such use, while the remainder do not currently use funds for this purpose. As reported by the States, in FY 1987 a total of approximately \$10.25 million nationally was approved for program development and coordination purposes. By comparison, the increase in the amount of funds available in FY 1988 for area plan administration nationally as a result of the increase from 8.5 to 10 percent of each State's Title III allotment equaled \$9.85 million. We concluded, therefore, that on a national basis the deletion of the program development and coordination authority would have resulted in only a modest reduction in the overall funds available for area plan administration purposes. However, because of the diverse pattern among States in the use of the existing program development and coordination authority, we recognized that deletion of this authority might have adverse effects in some States. As a result, we decided to retain the existing authority to use service funds for program development and coordination, but have added a requirement that the State agency must certify that the area agency which proposes to use supportive service funds for program development and coordination has demonstrated to the satisfaction of the State agency that the use of such funds will enhance the services available to older persons in the planning and service area. The program development and coordination provision appears at § 1321.17(f)(14).

A few commenters discussed the topic of outreach to older Indians under Title III and the question of coordination between Title III and Title VI of the Act. In response to the comments which were concerned with outreach to older Indians as required by section 306(a)(6)(N) of the Act, we added language to § 1321.17(f)(8) which emphasizes the responsibility of the

State agency to assure outreach to older Indians. As for coordination, we added in § 1321.17(f)(13) a new requirement that the State agency assure that services provided under Title III will be coordinated, where appropriate, with the services provided under Title VI of the Act. We also added similar requirements for coordination in §§ 1326.19(d)(6) and 1328.19(d)(6).

#### *Section 1321.35 Withdrawal of area agency designation.*

National aging organizations were the primary commenters submitting responses to this section of the proposed regulations. Several comments supported the proposed new language which would permit States to withdraw area agency on aging designation when the activities of the area agency are inconsistent with its statutory mission or in conflict with the requirement of the Act that it function only as an area agency on aging. Several other commenters suggested deletion of this new language because it was deemed to be unnecessary and because withdrawal of designation was not considered to be the intent of Congress.

**AoA Response:** In adding new language to section 305(c) of the Older Americans Act, Congress specified that an area agency is to function only for the purpose of serving as an area agency. The regulations make clear that it is the State agency's responsibility to ensure that area agencies adhere to this statutory mission and that the ultimate sanction by the State agency for noncompliance is withdrawal of designation as an area agency on aging. Therefore, we have not modified this provision.

#### *Section 1321.51(d) Confidentiality and disclosure of information.*

Many comments were received objecting to the inclusion of the requirement that the director of the State agency, or other legitimately authorized superior of the State ombudsman and of representatives of the Ombudsman Office, be given access to the ombudsman files. A number of Members of Congress were particularly concerned that this provision be deleted because of the belief that it authorizes unwarranted expansion of those individuals who would have access to the records of residents of long-term care facilities. Congressional commenters expressed the belief that the effectiveness of the ombudsman program would be decreased under the process proposed, since the effectiveness of the program is tied to confidentiality of complainants or residents of long-term care facilities.

**AoA Response:** Under section 307(a)(12) of the Older Americans Act, the State agency is required to "establish and operate" an ombudsman program. AoA proposed to include a provision at § 1321.51(d) allowing access to files by the State agency director and other authorized individuals to ensure that the State agency had the ability to monitor the quality and effectiveness of the program. Most commenters expressed the belief that access to ombudsman records by the State agency was not needed in order to properly monitor the program. However, we remain committed to the concept that it is the State agency on aging that is charged with its effective and high quality implementation; regular monitoring of this program by the State agency is essential to that end. We believe that access to the ombudsman files on a highly selective basis, without disclosure of the identity of any complainant or resident of a long-term care facility, is an essential element in determining the effectiveness and quality of this important service. Likewise, we are dedicated to maintaining the confidentiality of any complainant or resident of a long-term care facility. Therefore, proposed § 1321.51(d) has been deleted, and a carefully controlled and limited provision for access to the files has been added in § 1321.11(b). While a State agency on aging is not required to review the ombudsman files, when the director of the State agency determines that it must have access to the files to verify effectiveness and quality of programs, access will be under very limited and controlled circumstances, prohibiting disclosure of the identity of any complainant or resident of a long-term care facility to the individuals conducting the monitoring.

#### *Section 1321.52 Evaluation of unmet need.*

Some Members of Congress, as well as State agencies on aging and national organizations, requested that this section of the regulations be revised to include more specific directions relative to geographic and other factors that should be taken into consideration by States in their evaluations of unmet need.

**AoA Response:** We recognize that State agencies are in need of further guidance in this area. However, we determined that the level and type of guidance that State agencies would find most helpful would be too detailed to include in regulations; and that, to include in the regulations such detailed guidance for a one-time study would be



inconsistent with the Department-wide fundamental principle of regulatory simplicity. We do intend through our regular methods of information dissemination to make such guidance available to State agencies on aging.

*Section 1321.53 Mission of the area agency.*

As with § 1321.7, Mission of the State agency, many commenters expressed strong support for the fact that the proposed regulations include a clear statement of the mission of the area agency. State agencies on aging and service provider agencies were particularly supportive of this section. However, other commenters, mostly area agencies, requested that the mission statement be deleted. In the view of these commenters, the Act provides sufficient guidance on this topic. A few area agency commenters suggested that if a mission statement were necessary, it should be developed by each area agency, or by each State agency for its area agencies; and should not be included in regulations. Typical of several comments was the statement that the Older Americans Act emphasizes local decision-making and that it is inappropriate to impose a mission statement from above. Another perspective reflected was a concern that the mission statement was restrictive and would impede area agencies from taking advantage of opportunities to receive funding from commerce, industry and local governments. A few commenters suggested that the mission statement would restrict the latitude of area agencies to mirror and respond to the changing population trends among older persons.

*AoA Response:* Our reason for including this mission statement and the mission statement for the State agency in the proposed rules was to articulate in a unified fashion the provisions concerning State and area agency functions and responsibilities which are found in various places throughout the Older Americans Act. We fully support the concept of local decision-making under the Older Americans Act in matters which bear upon the manner in which each community responds to the needs of its older people; but in the case of area agencies on aging there is a common statutory mission which must guide such decision-making. We do not agree with the comment that the mission statement for area agencies in any manner restrains the ability of area agencies to take advantage of new opportunities or to be fully responsive to the challenges of a changing aging population. Rather, we believe that the mission statement, as proposed, sets a

benchmark against which each area agency can measure its progress in serving as a leader for the communities in the planning and service area for which it is responsible. We believe firmly that the mission statements for State and area agencies will prove to be significant and influential provisions, not because they impose any new requirements, but because they present a clear, well articulated vision of the mission of State and area agencies which other entities, communities and individuals can easily understand. Therefore, the statement of mission is essentially the same as that proposed in the NPRM.

However, in response to several commenters, we have made a minor revision in the mission statement. Some commenters were concerned that the term "community leadership" in proposed subsection (c) was subject to a degree of ambiguity. They indicated that it was not always clear who constituted the community leadership. In response to these comments, we have changed the term to "elected community officials."

*Section 1321.55 Organization and staffing of the area agency.*

Many of the commenters on this section requested that the language on organization and staffing in the existing regulations at § 1321.57 be retained, rather than the language in the proposed regulations. A number of the comments also focused on the fact that proposed subsection (a)(2) used the term "single" rather than "separate" in referring to the organizational unit within a multi-purpose agency. The commenters correctly noted that the Act uses the term "separate." The concern of the commenters, however, extended beyond the semantic difference between the terms "single" and "separate." A number of commenters expressed the opinion that the proposed regulations were too restrictive in interpreting the statutory requirement that the "separate organizational unit" within a multi-purpose agency, rather than the multi-purpose agency itself, be recognized as the designated area agency. In the view of these commenters, the intent of the Act in requiring a separate organizational unit within a multi-purpose agency was to assure the visibility of the aging program but not to require that the unit be the designated area agency. The commenters who expressed this view noted with concern that implementation of the proposed rule, in their opinion, could cause widespread de-designations of existing area agencies which are presently housed in regional planning districts,

councils of governments, county and private nonprofit umbrella agencies. Some commenters also suggested that subsection (c) of the proposed rule which discussed the circumstances under which an area agency would cease to function as an area should be deleted. The comments on this subsection were similar to those which were offered with regard to proposed § 1321.35, withdrawal of area agency designation.

*AoA Response:* We did not accept the request of those commenters who asked that we retain the language on organization and staffing of the area agency as found in the existing regulations. The language in those regulations does not adequately reflect the 1987 amendments to the Act. For technical accuracy, we have accepted the request to change the term "single" to "separate" in subsection (a)(2). However, we could not accept the interpretation of those commenters who suggested that the Act, in identifying the separate unit in a multi-purpose agency as the area agency, was merely intending that such a unit serve as a visible focal point for aging, but that the unit was not to be recognized as the designated area agency on aging. The requirement to consider the separate organizational unit within a multi-purpose agency as the designated area agency is a statutory provision found in section 305(c)(4) of the Act. We have simply restated this statutory provision in the regulations because of its importance. We do not concur with the views of those who expressed concern that recognizing the separate organizational unit as the designated area agency will result in widespread de-designation and disruption within the aging network. Each State agency on aging has the responsibility and the ability to assure that the requirements of the Act on this point are met, while at the same time avoiding major disruption, using the State's own appropriate policies and procedures. We expect that those States agencies which have designated multi-purpose agencies as area agencies on aging will move expeditiously to take whatever actions are necessary to comply with the requirements of the Act concerning the types of agencies or units which legally may be designated as area agencies on aging.

In order to avoid unnecessary disruption in the implementation of this provision, we have modified § 1321.55(a)(2) to provide that State action to comply with the requirement for designation of separate organizational units within multi-



purpose agencies currently serving as area agencies shall not be considered "designation of a new area agency" for purposes of section 305(b)(5)(B) of the Act. This section of the Act provides that whenever a State agency designates a new area agency, the State agency shall give the right of first refusal to a unit of general purpose local government if: (1) Such unit can meet the requirements of serving as an area agency; and (2) if the boundaries of such a unit and the boundaries of the planning and service area are reasonably contiguous. We believe that in the 1987 amendments Congress indicated to reaffirm the necessity for separate area agency identity in the case of a multi-purpose agency but did not intend to open the possibility for major changes of the type that might occur should the provisions of section 305(b)(5)(B) apply in this situation. Therefore, we have determined that the right of first refusal does not apply in the following limited circumstance: Where the State agency on aging designates as an area agency on aging a separate organizational unit of a multipurpose agency which has been serving as an area agency. The right of first refusal provision, of course, would be applicable in all other situations where the State agency designates an area agency.

*Section 1321.57 Area agency advisory council.*

A few commenters expressed their views about area agency advisory councils. Several commenters commended the fact that the membership of the advisory council was required to include more than 50 percent older persons, including minority individuals. One commenter indicated that the language of the proposed rules which stated that advisory councils "shall carry out functions" implied an incorrect role for advisory councils. This commenter stressed that advisory councils are, as their name implies, to provide advice to the area agency; but they do not have responsibility for implementing and carrying out functions of the area agency. The commenter requested that the language be changed to reflect this "advisory role," rather than an implementing role. Some area agency commenters also took exception to the proposed inclusion on the advisory council of representatives of health care provider organizations and representatives of supportive services providers. The reasons given for excluding these two groups were two: the Act does not mention them and their participation as advisory council members might create conflict of

interest situations. A large number of provider agencies commented favorably on the proposed regulations as written.

*AoA Response:* The fact that a small number of commenters chose to offer negative observations on this topic was offset by the fact that many others found the proposed regulation in this area to be highly satisfactory. It was not our intention to imply that the role of advisory councils was other than "to advise." However, we did wish to emphasize the potential resource represented by advisory councils and to urge area agencies to make greater use of their advisory councils in a variety of ways which further the development of systems of services at the community level. To avoid any possible ambiguity, we have clarified in subsection (a) that the functions of the council are "advisory" functions. However, we have not changed the language of the proposed rules concerning membership of the advisory council. We believe that health care providers and supportive services providers have essential roles to play in the development of responsive service systems at the community level; and we believe that it is important for all of the significant parties who must participate in the development of service systems for older persons to be actively involved in the process of planning for and implementing decisions directed to that end. Therefore, we have retained the requirement that representatives of health care providers and supportive services providers be included on the advisory council. We believe that the area agency can establish appropriate measures to assure that the presence of these representatives on the advisory council does not lead to any conflict of interest situations. As necessary, the State agency also can establish State policy on this matter.

*Section 1321.63 Purpose of service allotments.*

One Member of Congress and several other commenters indicated that the list of services found in § 1321.63(a) of the proposed regulations should be expanded to include "Outreach services." The reason offered by these commenters was that subsection (a) lists the categories of services for which funds are distributed by formula to State agencies on aging; and that outreach is one such service. A national organization pointed out that the language in subsection (a) should be modified to reflect the fact that area agencies, as well as the State agency, are involved in the development or enhancement of community systems building.

*AoA Response:* We accepted the points made by commenters and revised subsection (a) both to include "Outreach services" and to include reference to area agencies on aging.

*Section 1321.67 Service contributions.*

A number of commenters expressed concern that the proposed regulations, like earlier rules, permit contributions for supportive services. They pointed out that the Act speaks explicitly only of contributions for nutrition services and concluded from this fact that it was not proper to include in the regulations any provisions which dealt with contributions for supportive services. In addition to a general concern about contributions for supportive services, some commenters noted that in the case of certain types of services, such as information and referral, it is not practical to expect contributions. A few commenters indicated that providing an opportunity to contribute in some instances might serve as a disincentive for older persons to avail themselves of needed services. Another concern expressed by a few commenters was a fear that service providers might charge older persons for a service, rather than provide them with an opportunity to contribute voluntarily. These commenters cited examples of such abuse. Finally, a request was made by a few commenters to change the wording in subsection (a)(1) from "contribute voluntarily" to "voluntarily contribute." However, a large number of service provider agencies wrote favoring the proposed rules as written.

*AoA Response:* The question of whether or not it is allowable in regulations to provide an opportunity for contributions for supportive services was considered some time ago when we issued the original regulation on this matter. It was our conclusion then, and remains so now, that while the Act does not explicitly mention contributions for supportive services, it is permissible in regulations to provide a basis for the receipt of such contributions. The rule as it appeared in the NPRM repeated the rule which has been in effect for a number of years without any perceived difficulties. On the contrary, the voluntary contributions of program participants have allowed for a significant increase in the level of services provided in conjunction with the Title III program. The language of the regulation is clear: All contributions are voluntary; the privacy of each older person must be protected with respect to his or her contribution; and, no older person may be denied a service because of unwillingness or inability to



contribute. State and area agencies are expected to assure that older persons fully understand the voluntary nature of contributions and that the voluntary contribution provision does not present a disincentive for any older person to receive a service. If there is abuse, as some commenters noted, it is the responsibility of the respective State and area agency to take appropriate measures to assure that service providers do not misinterpret the rule as allowing, or even requiring, charges of services. We recognize that certain services, such as information and referral, do not lend themselves as readily as do other services to the idea of contributions. This fact in itself, however, need not preclude a service provider from providing "an opportunity" to contribute.

We also have clarified in these final rules the permissible alternatives for the use of service contributions which a State agency may establish through State policy. In order to assure that contributions made by program participants result in an expansion of services, a State agency may authorize the use by service providers of either or both of the alternatives described in 45 CFR 92.25(g) (2) and (3).

We will not permit States to use the deduction alternative described in 45 CFR 92.25(g)(1) since that alternative would be inconsistent with the requisite expansion of services under this part. Further, use of the deduction alternative would seriously jeopardize the continuance of the totally voluntary contributions which the participants make to the program. In the period between FY 1981 and FY 1987 voluntary contributions have risen from \$79 million to \$163.6 million per year. We do not wish to provide a disincentive for the continued growth in contributions.

#### Section 1321.71 Legal assistance.

The public comments on the legal assistance provisions of the proposed regulations focused on four points: (1) Limitation on services to individual clients; (2) legal services performed at the request of public officials; (3) activities taken in the provider's self-interest; and (4) limitation on the use of private funds.

#### 1. Lobbying on behalf of a client.

Several commenters stated that the proposed regulations did not include the Legal Services Corporation (LSC) provisions for lobbying on behalf of a client. Section 1612.5 of the LSC regulations ("Permissible activities on

behalf of eligible clients") covers that subject at length.

#### 2. Activities requested by public officials.

Section 1612.6 of the LSC regulations, like the LSC Act, permits certain legal activities to be undertaken at the request of public officials. Our proposed regulations did not include this provision.

#### 3/4. Activities in the provider's interest; restriction on use of private funds.

The commenters also expressed concern about the lack of an exception, from the general prohibition on lobbying, for self-help by the organization. Section 1321.71(i)(2)(i) of the proposed rules—like § 1612.13 of the LSC regulations—would have permitted lobbying with private funds and pertaining to measures directly affecting activities of the provider. Thus, there was a self-help exception, but only with respect to the use of private funds. The commenters also criticized the proposed restrictions on the use of private funds.

*AoA Response:* 1. *Lobbying on behalf of a client.* We intended to encompass these activities by the broad statement in proposed § 1321.71(b) that the regulations do not prohibit "any form of legal assistance to an eligible client \* \* \*" nor may they interfere with "the fulfillment of any attorney's professional responsibilities to a client." However, in response to the comments, we have added to § 1321.71(i) new subsections (5) and (6), which reflect the substance of § 1612.5 of the LSC regulations. These additional subsections are being added to the regulations to clarify the point for the benefit of those who expressed concern in their comments.

2. *Activities requested by public officials.* We believe that it would not be appropriate to use Title III funds to assist public officials with respect to issues other than aging. However, we agree that under certain circumstances, responding to a request from a public official or body on issues related to aging may be appropriate. Therefore, we have added to § 1321.71(i), a new subsection (7), which permits such actions on condition that the legal assistance provider first obtain the written approval of the responsible area agency.

3/4. *Activities in the provider's interest; restriction on use of private funds.* We have responded to the concerns of

commenters in these areas by deleting proposed § 1321.71(i)(2) as well as the words "by private entities or by a recipient, directly or through a subrecipient" in subsection (j). The effect of these deletions is that in these final rules there is no reference to—and thus, no limitation on—the use of private funds for any purpose. We agree that AoA has no particular interest in regulating the use of funds from other sources, so long as the activities undertaken with those funds do not conflict with the provider's responsibilities toward its clients. Thus, providers may use private funds for self-help activities, as is permissible under the LSC regulations.

#### Other Comments

In addition to the areas of comments noted above, some commenters addressed other topics. For example, some commenters asked that interim final regulations be issued in order to provide further opportunity for comment. A small number of other commenters requested under greater level of detail and specificity in many areas of the regulations. A few commenters asked that the regulations include matters which are of an internal administrative nature, such as a description of the duties and functions of the Associate Commissioner for American Indians, Alaskan Natives, and Hawaiian Natives.

*AoA Response:* We provided a 60 day comment period on the proposed regulations and have carefully reviewed over 700 letters of comment submitted by persons from all parts of the nation who represented widely divergent points of view. We have accepted and incorporated in these final regulations those comments which in our judgment served to strengthen and clarify the regulations. We do not believe that any useful purpose would be served by issuance of interim final regulations with another comment period. While a few commenters encouraged that we include greater detail and stringency in these regulations, we have not accepted that suggestion. Our principle in writing these regulations has been to provide maximum flexibility and in accordance with Department policy, to avoid needlessly burdensome requirements. Finally, we have not acceded to the request to include in the regulations matters which relate to the internal operation of the Administration on Aging and the Department of Health and Human Services. We do not consider matters of that nature to be proper



material for inclusion in program regulations.

#### Liquidation of obligations

Several commenters expressed concern regarding the impact of § 92.23(b) of the HHS regulation—"Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." 45 CFR 92.23(b) requires States to liquidate obligations no later than 90 days after the end of the period during which the State is permitted to obligate the federal funds. The commenters stated that the multi-tiered grant structure of Title III (AoA, State unit on aging, area agency on aging and service provider) prohibits compliance with this common rule requirement.

**AoA response:** This matter affects all federal programs that permit sub-awards with performance periods that run beyond the period during which grant funds are available to the State for obligation. Consequently it will be covered in a separate rule.

#### Other Technical Changes (§§ 1321.3, 1321.23, 1321.29, 1321.79 and 1321.83)

We have deleted the proposed definition for "Administrative action" in § 1321.3 because it was pointed out to us that the 1987 amendments deleted the word "administrative" from section 307(a)(12)(i) of the Act and there is no longer a need for this definition. Also, based on a suggestion from a commenter, we added the words "or State law" following the word "Act" the second time it appears in the definition of "Official duties" because in some instances State law may specify official duties of the State Ombudsman Office representatives.

We have moved §§ 1321.23 (c) and (d) of the proposed regulations. They have now become §§ 1321.29 (c) and (d). These sections are related to the designation of planning and service areas which is discussed under § 1321.29.

We have deleted the redundant statement regarding the effective date of a decision to withhold funds which appeared in § 1321.79(a) of the NPRM as follows: " \* \* \* or later than the first date of the Commissioner's decision \* \* \* ". The corrected sentence in which the redundancy appeared now reads as follows: "This effective date may not be earlier than the date of the Commissioner's decision or later than the first day of the next calendar quarter."

We have inserted a phrase pertaining to the reallocation of funds withheld from the State which was inadvertently omitted from the first paragraph of

§ 1321.83. After the phrase " \* \* \* or political subdivision of the State \* \* \* ", we have inserted: " \* \* \* that has the authority and capacity to carry out the functions of the State agency \* \* \* "

These regulations require compliance with certain sections of the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, at 45 CFR Part 92. Since the regulations in Part 92 will not be effective until October 1, 1988, these final regulations should be understood as referring to the corresponding predecessor provisions of OMB Circular A-102 for the period prior to that date.

#### Impact Analysis

##### Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that these rules do not constitute a major rule because they will not have an annual effect on the economy of \$100 million or more; result in major increase in costs or prices for consumers, any industries, any governmental agency or any geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets. We do not believe that there will be any additional costs under these rules since the types of statutorily mandated data we will collect are ordinarily utilized by States for efficient program management.

##### Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act of 1980, Pub. L. 96-354, requires that an agency prepare a regulatory flexibility analysis for a proposed or final rule if the rule would have significant economic impact on a substantial number of "small entities", i.e. small businesses, small non-profit organizations, or small governmental jurisdictions.

The responsibility for meeting the requirements of these regulations is on the State agencies and to a lesser extent on area agencies. Actual delivery of services may be provided in some circumstances by proprietary, public and not-for-profit agencies or organizations under grants or contracts from State or area agencies. Although area agencies and most service delivery agencies and organizations are "small entities" within the meaning of the Act, this rule will impose no significant burdens on State agencies, area agencies or other affected parties and will provide flexibility to State and area

agencies in implementing the provisions of the Act. For these reasons, the Secretary hereby certifies that these regulations will not have a significant impact on a substantial number of small entities.

#### Recordkeeping and Reporting Requirements

Sections 202, 305, 306, 307, 614, and 623 of the Act require collection of data, area and State plans and Native American organization applications. These rules at §§ 1321.17, 1326.19 and 1328.19 contain revised information collection requirements. The Act requires the Commissioner each fiscal year to collect from States statistical data on programs and activities carried out with funds provided under the Act. The data must include for each type of service: The aggregate amount of funds expended, the number of individuals served, and the number of units of service provided. Additionally, the data must indicate the number of senior centers funded and the extent to which area agencies satisfied their statutory requirements concerning expenditure of adequate funds on specified services and targeted services to older persons in greatest need. In responding to new statutory data collection requirements, AoA will be sensitive to avoiding any needless burden on State and area agencies. AoA will provide States with an opportunity to comment on revised information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we have submitted a copy of these revised information collection requirements to the Office of Management and Budget (OMB) for its review.

OMB has not yet approved the revised information collection requirements contained in these rules. The new information collection requirements contained in §§ 1321.17, 1326.19 and 1328.19 will not go into effect until OMB approval has been obtained. Although OMB has not yet approved the sections of these regulations associated with the development of State and area plans and Native American organization applications, those statutory activities required to maintain eligibility for funding remain in effect. When OMB assigns information collection approval numbers, we will publish a notice in the **Federal Register**.

#### List of Subjects

##### 45 CFR Part 1321

Administrative practice and procedure, Aged, Grant program/social



programs, Nutrition, Reporting and recordkeeping requirements.

#### 45 CFR Part 1326

Administrative practice and procedures, Aged, Grant programs, Indians, Reporting and recordkeeping requirements.

#### 45 CFR Part 1328

Administrative practice and procedures, Aged, Grant programs, Hawaiian Natives, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Numbers: 13.633 Special Programs for Aging, Title III Part A and B—Grants on Aging; 13.635 Special Programs for Aging, Title III Part C—Nutrition Services); (13.655 Special Programs for Aging, Title VI—Grants for Indian Tribes)

Dated: June 22, 1988.

Carol Fraser Fisk,

Commissioner on Aging.

Approved: July 11, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

For the reasons set forth in the Preamble, Chapter XIII, Subchapter C, of Title 45, Subtitle B, Code of Federal Regulations is amended as follows:

1. Part 1321 is revised as follows:

### PART 1321—GRANTS TO STATE AND COMMUNITY PROGRAMS ON AGING

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#### Subpart C—Area Agency Responsibilities

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#### Subpart D—Service Requirements

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1321.83 How the Commissioner may reallocate the State's withheld payments.

Authority: 42 U.S.C. 3001 et seq.; Title III of the Older Americans Act, as Amended.

#### Subpart A—Introduction

##### § 1321.1 Basis and purpose of this part.

(a) This part prescribes requirements State agencies shall meet to receive grants to develop comprehensive and coordinated systems for the delivery of supportive and nutrition services under Title III of the Older Americans Act, as amended (Act). These requirements include:

- (1) Designation and responsibilities of State agencies;
- (2) State plans and amendments;
- (3) Services delivery; and
- (4) Hearing procedures for applicants for planning and services area designation.

(b) The requirements of this part are based on Title III of the Act. Title III provides for formula grants to State agencies on aging, under approved State plans, to stimulate the development or enhancement of comprehensive and coordinated community-based systems resulting in a continuum of services to older persons with special emphasis on older individuals with the greatest economic or social need, with particular attention to low-income minority individuals. A responsive community-

based system of services shall include collaboration in planning, resource allocation and delivery of a comprehensive array of services and opportunities for all older Americans in the community. The intent is to use Title III funds as a catalyst in bringing together public and private resources in the community to assure the provision of a full range of efficient, well coordinated and accessible services for older persons.

(c) Each State agency designates planning and service areas in the State, and makes a subgrant or contract under an approved area plan to one area agency in each planning and service area for the purpose of building comprehensive systems for older people throughout the State. Area agencies in turn make subgrants or contracts to service providers to perform certain specified functions.

##### § 1321.3 Definitions.

"Act" means the Older Americans Act of 1965 as amended.

"Altering" or "renovating," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means making modifications to or in connection with an existing facility which are necessary for its effective use as a center. These may include renovation, repair, or expansion which is not in excess of double the square footage of the original facility and all physical improvements.

"Constructing," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modifications to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

"Department" means the Department of Health and Human Services.

"Direct services," as used in this part, means any activity performed to provide services directly to an individual older person by the staff of a service provider, an area agency, or a State agency in a single planning and service area State.

"Fiscal year," as used in this part, means the Federal Fiscal Year.

"Frail," as used in this part, means having a physical or mental disability, including having Alzheimer's disease or a related disorder with neurological or organic brain dysfunction, that restricts the ability of an individual to perform normal daily tasks or which threatens the capacity of an individual to live independently.



"Human services," as used in § 1321.41(a)(1) of this part, with respect to criteria for designation of a statewide planning and service area, means social, health, or welfare services.

"In-home service," as used in this part, includes: (a) Homemaker and home health aides; (b) visiting and telephone reassurance; (c) chore maintenance; (d) in-home respite care for families, including adult day care as a respite service for families; and (e) minor modification of homes that is necessary to facilitate the ability of older individuals to remain at home, and that is not available under other programs, except that not more than \$150 per client may be expended under this part for such modification.

"Means test," as used in the provision of services, means the use of an older person's income or resource to deny or limit that person's receipt of services under this part.

"Official duties," as used in section 307(a)(12)(J) of the Act with respect to representatives of the Long-Term Care Ombudsman Program, means work pursuant to the Long-Term Care Ombudsman Program authorized by the Act or State law and carried out under the auspices and general direction of the State Long-Term Care Ombudsman.

"Periodic," as used in sections 306(a)(6) and 307(a)(8) of the Act with respect to evaluations of, and public hearings on, activities carried out under State and area plans, means, at a minimum, once each fiscal year.

"Reservation," as used in section 305(b)(4) of the Act with respect to the designation of planning and service areas, means any federally or State recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaskan Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

"Service provider," as used in section 306(a)(1) of the Act with respect to the provision of supportive and nutrition services, means an entity that is awarded a subgrant or contract from an area agency to provide services under the area plan.

"Severe disability," as used to carry out the provisions of the Act, means a severe chronic disability attributable to mental and/or physical impairment of an individual that:

(a) Is likely to continue indefinitely; and

(b) Results in substantial functional limitation in 3 or more of the following major life activities:

- (1) Self-care,
- (2) Receptive and expressive language,

- (3) Learning,
- (4) Mobility,
- (5) Self-direction,
- (6) Capacity for independent living, and
- (7) Economic self-sufficiency.

#### § 1321.5 Applicability of other regulations.

Several other regulations apply to all activities under this part. These include but are not limited to:

- (a) 45 CFR Part 16—Procedures of the Departmental Grant Appeals Board;
- (b) 45 CFR Part 74—Administration of Grants, except Subpart N;
- (c) 45 CFR Part 80—Nondiscrimination under Programs Receiving Federal Assistance through the Department of Health and Human Services: Effectuation of Title VI of the Civil Rights Act of 1964;
- (d) 45 CFR Part 81—Practice and Procedures for Hearings Under Part 80 of this Title;
- (e) 45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Participation;
- (f) 45 CFR Part 91—Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance;
- (g) 45 CFR Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;
- (h) 45 CFR Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities; and
- (i) 5 CFR Part 900, Subpart F, Standards for a Merit System of Personnel Administration.

#### Subpart B—State Agency Responsibilities

##### § 1321.7 Mission of the State agency.

(a) The Older Americans Act intends that the State agency on aging shall be the leader relative to all aging issues on behalf of all older persons in the State. This means that the State agency shall proactively carry out a wide range of functions related to advocacy, planning, coordination, interagency linkages, information sharing, brokering, monitoring and evaluation, designed to lead to the development or enhancement of comprehensive and coordinated community based systems in, or serving, communities throughout the State. These systems shall be designed to assist older persons in leading independent, meaningful and dignified lives in their own homes and communities as long as possible.

(b) The State agency shall designate area agencies on aging for the purpose

of carrying out the mission described above for the State agency at the sub-State level. The State agency shall designate as its area agencies on aging only those sub-state agencies having the capacity and making the commitment to fully carry out the mission described for area agencies in § 1321.53 below.

(c) The State agency shall assure that the resources made available to area agencies on aging under the Older Americans Act are used to carry out the mission described for area agencies in § 1321.53 below.

##### § 1321.9 Organization and staffing of the State agency.

(a) The State shall designate a sole State agency to develop and administer the State plan required under this part and serve as the effective visible advocate for the elderly within the State.

(b) The State agency shall have an adequate number of qualified staff to carry out the functions prescribed in this part.

(c) The State agency shall have within the State agency, or shall contract or otherwise arrange with another agency or organization, as permitted by section 307(a)(12)(A), an Office of the State Long-Term Care Ombudsman, with a full-time State ombudsman and such other staff as are appropriate.

(d) If a State statute establishes a State ombudsman program which will perform the functions of section 307(a)(12) of the Act, the State agency continues to be responsible to assure that all of the requirements of the Act for this program are met regardless of the State legislation or source of funds. In such cases, the Governor shall confirm this through an assurance in the State plan.

##### 1321.11 State agency policies.

(a) The State agency on aging shall develop policies governing all aspects of programs operated under this part, including the ombudsman program whether operated directly by the State agency or under contract. These policies shall be developed in consultation with other appropriate parties in the State. The State agency is responsible for enforcement of these policies.

(b) The policies developed by the State agency shall address the manner in which the State agency will monitor the performance of all programs and activities initiated under this part for quality and effectiveness. In monitoring the ombudsman program, access to files, minus the identity of any complainant or resident of a long-term care facility, shall be available only to the director of



the State agency on aging and one other senior manager of the State agency designated by the State director for this purpose. In the conduct of the monitoring of the ombudsman program, the confidentiality protections concerning any complainant or resident of a long term care facility as prescribed in section 307(a)(12) of the Act shall be strictly adhered to.

#### § 1321.13 Advocacy responsibilities.

(a) The State agency shall:

(1) Review, monitor, evaluate and comment on Federal, State and local plans, budgets, regulations, programs, laws, levies, hearings, policies, and actions which affect or may affect older individuals and recommend any changes in these which the State agency considers to be appropriate;

(2) Provide technical assistance to agencies, organizations, associations, or individuals representing older persons; and

(3) Review and comment, upon request, on applications to State and Federal agencies for assistance relating to meeting the needs of older persons.

(b) No requirement in this section shall be deemed to supersede a prohibition contained in a Federal appropriation on the use of Federal funds to lobby the Congress.

#### § 1321.15 Duration, format and effective date of the State plan.

(a) A State may use its own judgment as to the format to use for the plan, how to collect information for the plan, and whether the plan will remain in effect for two, three or four years.

(b) An approved State plan or amendment, as identified in § 1321.17, becomes effective on the date designated by the Commissioner.

(c) A State agency may not make expenditures under a new plan or amendment requiring approval, as identified in § 1321.17 and § 1321.19, until it is approved.

#### § 1321.17 Content of State plan.

To receive a grant under this part, a State shall have an approved State plan as prescribed in section 307 of the Act. In addition to meeting the requirements of section 307, a State plan shall include:

(a) Identification by the State of the sole State agency that has been designated to develop and administer the plan.

(b) Statewide program objectives to implement the requirements under Title III of the Act and any objectives established by the Commissioner through the rulemaking process.

(c) A resource allocation plan indicating the proposed use of all Title

III funds administered by a State agency, and the distribution of Title III funds to each planning and service area.

(d) Identification of the geographic boundaries of each planning and service area and of area agencies on aging designated for each planning and service area, if appropriate.

(e) Provision of prior Federal fiscal year information related to low income minority and rural older individuals as required by sections 307(a) (23) and (29) of the Act.

(f) Each of the assurances and provisions required in sections 305 and 307 of the Act, and provisions that the State meets each of the requirements under §§ 1321.5 through 1321.75 of this part, and the following assurances as prescribed by the Commissioner:

(1) Each area agency engages only in activities which are consistent with its statutory mission as prescribed in the Act and as specified in State policies under § 1321.11;

(2) Preference is given to older persons in greatest social or economic need in the provision of services under the plan;

(3) Procedures exist to ensure that all services under this part are provided without use of any means tests;

(4) All services provided under Title III meet any existing State and local licensing, health and safety requirements for the provision of those services;

(5) Older persons are provided opportunities to voluntarily contribute to the cost of services;

(6) Area plans shall specify as submitted, or be amended annually to include, details of the amount of funds expended for each priority service during the past fiscal year;

(7) The State agency on aging shall develop policies governing all aspects of programs operated under this part, including the manner in which the ombudsman program operates at the State level and the relation of the ombudsman program to area agencies where area agencies have been designated;

(8) The State agency will require area agencies on aging to arrange for outreach at the community level that identifies individuals eligible for assistance under this Act and other programs, both public and private, and informs them of the availability of assistance. The outreach efforts shall place special emphasis on reaching older individuals with the greatest economic or social needs with particular attention to low income minority individuals, including outreach to identify older Indians in the planning and service area and inform such older

Indians of the availability of assistance under the Act.

(9) The State agency shall have and employ appropriate procedures for data collection from area agencies on aging to permit the State to compile and transmit to the Commissioner accurate and timely statewide data requested by the Commissioner in such form as the Commissioner directs; and

(10) If the State agency proposes to use funds received under section 303(f) of the Act for services other than those for preventive health specified in section 361, the State plan shall demonstrate the unmet need for the services and explain how the services are appropriate to improve the quality of life of older individuals, particularly those with the greatest economic or social need, with special attention to low-income minorities.

(11) Area agencies shall compile available information, with necessary supplementation, on courses of post-secondary education offered to older individuals with little or no tuition. The assurance shall include a commitment by the area agencies to make a summary of the information available to older individuals at multipurpose senior centers, congregate nutrition sites, and in other appropriate places.

(12) Individuals with disabilities who reside in a non-institutional household with and accompany a person eligible for congregate meals under this part shall be provided a meal on the same basis that meals are provided to volunteers pursuant to section 307(a)(13)(I) of the Act.

(13) The services provided under this part will be coordinated, where appropriate, with the services provided under Title VI of the Act.

(14)(i) The State agency will not fund program development and coordinated activities as a cost of supportive services for the administration of area plans until it has first spent 10 percent of the total of its combined allotments under Title III on the administration of area plans;

(ii) State and area agencies on aging will, consistent with budgeting cycles (annually, biannually, or otherwise), submit the details of proposals to pay for program development and coordination as a cost of supportive services, to the general public for review and comment; and

(iii) The State agency certifies that any such expenditure by an area agency will have a direct and positive impact on the enhancement of services for older persons in the planning and service area.



(15) The State agency will assure that where there is a significant population of older Indians in any planning and service area that the area agency will provide for outreach as required by section 306(a)(6)(N) of the Act.

#### § 1321.19 Amendments to the State plan.

(a) A State shall amend the State plan whenever necessary to reflect:

(1) New or revised Federal statutes or regulations;

(2) A material change in any law, organization, policy or State agency operation, or

(3) Information required annually by sections 307(a) (23) and (29) of the Act.

(b) Information required by paragraph (a)(3) of this section shall be submitted according to guidelines prescribed by the Commissioner.

(c) If a State intends to amend provisions of its plan required under §§ 1321.17 (a) or (f), it shall submit its proposed amendment to the Commissioner for approval. If the State changes any of the provisions of its plan required under § 1321.17 (b) through (d), it shall amend the plan and notify the Commissioner. A State need only submit the amended portions of the plan.

#### § 1321.21 Submission of the State plan or plan amendment to the Commissioner for approval.

Each State plan, or plan amendment which requires approval of the Commissioner, shall be signed by the Governor or the Governor's designee and submitted to the Commissioner to be considered for approval at least 45 calendar days before the proposed effective date of the plan or plan amendment.

#### § 1321.23 Notification of State plan or State plan amendment approval.

(a) The Commissioner approves a State plan or State plan amendment by notifying the Governor or the Governor's designee in writing.

(b) When the Commissioner proposes to disapprove a State plan or amendment, the Commissioner notifies the Governor in writing, giving the reasons for the proposed disapproval, and informs the State agency that it has 60 days to request a hearing on the proposed disapproval following the procedures specified in Subpart E of this part.

#### § 1321.25 Restriction of delegation of authority to other agencies.

A State or area agency may not delegate to another agency the authority to award or administer funds under this part.

#### § 1321.27 Public participation.

The State agency shall have a mechanism to obtain and shall consider the views of older persons and the public in developing and administering the State plan.

#### § 1321.29 Designation of planning and service areas.

(a) Any unit of general purpose local government, region within a State recognized for area wide planning, metropolitan area, or Indian reservation may make application to the State agency to be designated as a planning and service area, in accordance with State agency procedures.

(b) A State agency shall approve or disapprove any application submitted under paragraph (a) of this section.

(c) Any applicant under paragraph (a) of this section whose application for designation as a planning and service area is denied by a State agency may appeal the denial to the State agency, under procedures specified by the State agency.

(d) If the State denies an applicant for designation as a planning and service area under paragraph (a) of this section, the State shall provide a hearing on the denial of the application, if requested by the applicant, as well as issue a written decision.

#### § 1321.31 Appeal to Commissioner.

This section sets forth the procedures the Commissioner follows for providing hearings to applicants for designation as a planning and service area, under § 1321.29(a), whose application is denied by the State agency.

(a) Any applicant for designation as a planning and service area under § 1321.29(a) whose application is denied, and who has been provided a hearing and a written decision by the State agency, may appeal the denial to the Commissioner in writing within 30 days following receipt of a State's hearing decision.

(b) The Commissioner, or the Commissioner's designee, holds a hearing, and issues a written decision, within 60 days following receipt of an applicant's written request to appeal the State agency hearing decision to deny the applicant's request under § 1321.29(a).

(c) When the Commissioner receives an appeal, the Commissioner requests the State Agency to submit:

(1) A copy of the applicant's application for designation as a planning and service area;

(2) A copy of the written decision of the State; and

(3) Any other relevant information the Commissioner may require.

(d) The procedures for the appeal consist of:

(1) Prior written notice to the applicant and the State agency of the date, time and location of the hearing;

(2) The required attendance of the head of the State agency or designated representatives;

(3) An opportunity for the applicant to be represented by counsel or other representative; and

(4) An opportunity for the applicant to be heard in person and to present documentary evidence.

(e) The Commissioner may:

(1) Deny the appeal and uphold the decision of a State agency;

(2) Uphold the appeal and require a State agency to designate the applicant as a planning and service area; or

(3) Take other appropriate action, including negotiating between the parties or remanding the appeal to the State agency after initial findings.

(f) The Commissioner will uphold the decision of the State agency if it followed the procedures specified in § 1321.29, and the hearing decision is not manifestly inconsistent with the purpose of this part.

(g) The Commissioner's decision to uphold the decision of a State agency does not extend beyond the period of the approved State plan.

#### § 1321.33 Designation of area agencies.

An area agency may be any of the types of agencies under section 305(c) of the Act. A State may not designate any regional or local office of the State as an area agency. However, when a new area agency on aging is designated, the State shall give right of first refusal to a unit of general purpose local government as required in section 305(b)(5)(B) of the Act. If the unit of general purpose local government chooses not to exercise this right, the State shall then give preference to an established office on aging as required in section 305(c)(5) of the Act.

#### § 1321.35 Withdrawal of area agency designation.

(a) In carrying out section 305 of the Act, the State agency shall withdraw the area agency designation whenever it, after reasonable notice and opportunity for a hearing, finds that:

(1) An area agency does not meet the requirements of this part;

(2) An area plan or plan amendment is not approved;

(3) There is substantial failure in the provisions or administration of an approved area plan to comply with any provision of the Act or of this part or policies and procedures established and



published by the State agency on aging; or

(4) Activities of the area agency are inconsistent with the statutory mission prescribed in the Act or in conflict with the requirement of the Act that it function only as an area agency on aging.

(b) If a State agency withdraws an area agency's designation under paragraph (a) of this section it shall:

(1) Provide a plan for the continuity of area agency functions and services in the affected planning and service area; and

(2) Designate a new area agency in the planning and service area in a timely manner.

(c) If necessary to ensure continuity of services in a planning and service area, the State agency may, for a period of up to 180 days after its final decision to withdraw designation of an area agency:

(1) Perform the responsibilities of the area agency; or

(2) Assign the responsibilities of the area agency to another agency in the planning and service area.

(d) The Commissioner may extend the 180-day period if a State agency:

(1) Notifies the Commissioner in writing of its action under paragraph (c) of this section;

(2) Requests an extension; and

(3) Demonstrates to the satisfaction of the Commissioner a need for the extension.

#### § 1321.37 Intrastate funding formula.

(a) The State agency, after consultation with all area agencies in the State, shall develop and use an intrastate funding formula for the allocation of funds to area agencies under this part. The State agency shall publish the formula for review and comment by older persons, other appropriate agencies and organizations and the general public. The formula shall reflect the proportion among the planning and service areas of persons age 60 and over in greatest economic or social need with particular attention to low-income minority individuals. The State agency shall review and update its formula as often as a new State plan is submitted for approval.

(b) The intrastate funding formula shall provide for a separate allocation of funds received under section 303(f) for preventive health services. In the award of such funds to selected planning and service areas, the State agency shall give priority to areas of the State:

(1) Which are medically underserved; and

(2) In which there are large numbers of individuals who have the greatest

economic and social need for such services.

(c) The State agency shall submit its intrastate formula to the Commissioner for review and comment. The intrastate formula shall be submitted separately from the State plan.

#### § 1321.41 Single State planning and service area.

(a) The Commissioner will approve the application of a State which was, on or before October 1, 1980, a single planning and service area, to continue as a single planning and service area if the State agency demonstrates that:

(1) The State is not already divided for purposes of planning and administering human services; or

(2) The State is so small or rural that the purposes of this part would be impeded if the State were divided into planning and services areas; and

(3) The State agency has the capacity to carry out the responsibilities of an area agency, as specified in the Act.

(b) Prior to the Commissioner's approval for a State to continue as a single planning and service area, all the requirements and procedures in § 1321.29 shall be met.

(c) If the Commissioner approves a State's application under paragraph (a) this section:

(1) The Commissioner notifies the State agency to develop a single State planning and service area plan which meets the requirements of section 306 and 307 of the Act.

(2) A State agency shall meet all the State and area agency function requirements specified in the Act.

(d) If the Commissioner denies the application because a State fails to meet the criteria or requirements set forth in paragraphs (a) or (b) of this section, the Commissioner notifies the State that it shall follow procedures in section 305(A)(1)(E) of the Act to divide the State into planning and service areas.

#### § 1321.43 Interstate planning and service area.

(a) Before requesting permission of the Commissioner to designate an interstate planning and service area, the Governor of each State shall execute a written agreement that specifies the State agency proposed to have lead responsibility for administering the programs within the interstate planning and service area and lists the conditions, agreed upon by each State, governing the administration of the interstate planning and service area.

(b) The lead State shall request permission of the Commissioner to designate an interstate planning and service area.

(c) The lead State shall submit the request together with a copy of the agreement as part of its State plan or as an amendment to its State plan.

(d) Prior to the Commissioner's approval for States to designate an interstate planning and service area, the Commissioner shall determine that all applicable requirements and procedures in § 1321.29 and § 1321.33 of this part, shall be met.

(e) If the request is approved, the Commissioner, based on the agreement between the States, increases the allotment of the State with lead responsibility for administering the programs within the interstate area and reduces the allotment(s) of the State(s) without lead responsibility by one of these methods:

(1) Reallotment of funds in proportion to the number of individuals age 60 and over for that portion of the interstate planning and service area located in the State without lead responsibility; or

(2) Reallotment of funds based on the intrastate funding formula of the State(s) without lead responsibility.

#### § 1321.45 Transfer between congregate and home-delivered nutrition service allotments.

(a) A State agency, without the approval of the Commissioner, may transfer between allotments up to 30 percent of a State's separate allotments for congregate and home-delivered nutrition services.

(b) A State agency may apply to the Commissioner to transfer from one allotment to the other a portion exceeding 30 percent of a State's separate allotments for congregate and home-delivered nutrition services. A State agency desiring such a transfer of allotment shall:

(1) Specify the percent which it proposes to transfer from one allotment to the other;

(2) Specify whether the proposed transfer is for the entire period of a State plan or a portion of a plan period; and

(3) Specify the purpose of the proposed transfer.

#### § 1321.47 Statewide non-Federal share requirements.

The statewide non-Federal share for State or area plan administration shall not be less than 25 percent of the funds used under this part. All services statewide, including ombudsman services and services funded under Title III-B, C, D, E and F, shall be funded on a statewide basis with a non-Federal share of not less than 15 percent. Matching requirements for individual



area agencies are determined by the State agency.

**§ 1321.49 State agency maintenance of effort.**

In order to avoid a penalty, each fiscal year the State agency, to meet the required non-federal share applicable to its allotments under this part, shall spend under the State plan for both services and administration at least the average amount of State funds it spent under the plan for the three previous fiscal years. If the State agency spends less than this amount, the Commissioner reduces the State's allotments for supportive and nutrition services under this part by a percentage equal to the percentage by which the State reduced its expenditures.

**§ 1321.51 Confidentiality and disclosure of information.**

(a) A State agency shall have procedures to protect the confidentiality of information about older persons collected in the conduct of its responsibilities. The procedures shall ensure that no information about an order person, or obtained from an order person by a service provider or the State or area agency, is disclosed by the provider or agency in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal, State, or local monitoring agencies.

(b) A State agency is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.

(c) A State or area agency on aging may not require a provider of legal assistance under this part to reveal any information that is protected by attorney client privilege.

**§ 1321.52 Evaluation of unmet need.**

Each State shall submit objectively collected and statistically valid data with evaluative conclusions concerning the unmet need for supportive services, nutrition services, and multipurpose senior centers gathered pursuant to section 307(a)(3)(A) of the Act to the Commissioner. The evaluations for each State shall consider all services in these categories regardless of the source of funding for the services. This information shall be submitted not later than June 30, 1989 and shall conform to guidance issued by the Commissioner.

**Subpart C—Area Agency Responsibilities**

**§ 1321.53 Mission of the area agency.**

(a) The Older Americans Act intends that the area agency on aging shall be the leader relative to all aging issues on behalf of all older persons in the planning and service area. This means that the area agency shall proactively carry out, under the leadership and direction of the State agency, a wide range of functions related to advocacy, planning, coordination, inter-agency linkages, information sharing, brokering, monitoring and evaluation, designed to lead to the development or enhancement of comprehensive and coordinated community based systems in, or serving, each community in the planning and service area. These systems shall be designed to assist older persons in leading independent, meaningful and dignified lives in their own homes and communities as long as possible.

(b) A comprehensive and coordinated community based system described in paragraph (a) of this section shall:

(1) Have a visible focal point of contact where anyone can go or call for help, information or referral on any aging issue;

(2) Provide a range of options;

(3) Assure that these options are readily accessible to all older persons: The independent, semi-dependent and totally dependent, no matter what their income;

(4) Include a commitment of public, private, voluntary and personal resources committed to supporting the system;

(5) Involve collaborative decision-making among public, private, voluntary, religious and fraternal organizations and older people in the community;

(6) Offer special help or targeted resources for the most vulnerable older persons, those in danger of losing their independence;

(7) Provide effective referral from agency to agency to assure that information or assistance is received, no matter how or where contact is made in the community;

(8) Evidence sufficient flexibility to respond with appropriate individualized assistance, especially for the vulnerable older person;

(9) Have a unique character which is tailored to the specific nature of the community;

(10) Be directed by leaders in the community who have the respect, capacity and authority necessary to convene all interested persons, assess needs, design solutions, track overall success, stimulate change and plan

community responses for the present and for the future.

(c) The resources made available to the area agency on aging under the Older Americans Act are to be used to finance those activities necessary to achieve elements of a community based system set forth in paragraph (b) of this section. For the purpose of assuring access to information and services for older persons, the area agency shall work with elected community officials in the planning and service area to designate one or more focal points on aging in each community, as appropriate. The area agency shall list designated focal points in the area plan. It shall be the responsibility of the area agency, with the approval of the State agency, to define "community" for the purposes of this section. Since the Older Americans Act defines focal point as a "facility" established to encourage the maximum collocation and coordination of services for older individuals, special consideration shall be given to developing and/or designating multipurpose senior centers as community focal points on aging. The area agency on aging shall assure that services financed under the Older Americans Act in, or on behalf of, the community will be either based at, linked to or coordinated with the focal points designated. The area agency on aging shall assure access from the designated focal points to services financed under the Older Americans Act. The area agency on aging shall work with, or work to assure that community leadership works with, other applicable agencies and institutions in the community to achieve maximum collocation at, coordination with or access to other services and opportunities for the elderly from the designated community focal points. The area agency may not engage in any activity which is inconsistent with its statutory mission prescribed in the Act or policies prescribed by the State under § 1321.11.

**§ 1321.55 Organization and staffing of the area agency.**

(a) An area agency may be either:

(1) An agency whose single purpose is to administer programs for older persons; or

(2) A separate organizational unit within a multi-purpose agency which functions only for purposes of serving as the area agency on aging. Where the State agency on aging designates, as an area agency on aging, a separate organizational unit of a multipurpose agency which has been serving as an area agency, the State agency action



shall not be subject to section 305(b)(5)(B) of the Act.

(b) The area agency, once designated, is responsible for providing for adequate and qualified staff to perform all of the functions prescribed in this part.

(c) The designated area agency continues to function in that capacity until either:

(1) The area agency informs the State agency that it no longer wishes to carry out the responsibilities of an area agency; or

(2) The State agency withdraws the designation of the area agency as provided in § 1321.35.

#### § 1321.57 Area agency advisory council.

(a) *Functions of council.* The area agency shall establish an advisory council. The council shall carry out advisory functions which further the area agency's mission of developing and coordinating community-based systems of services for all older persons in the planning and service area. The council shall advise the agency relative to:

(1) Developing and administering the area plan;

(2) Conducting public hearings;

(3) Representing the interest of older persons; and

(4) Reviewing and commenting on all community policies, programs and actions which affect older persons with the intent of assuring maximum coordination and responsiveness to older persons.

(b) *Composition of council.* The council shall include individuals and representatives of community organizations who will help to enhance the leadership role of the area agency in developing community-based systems of services. The advisory council shall be made up of:

(1) More than 50 percent older persons, including minority individuals who are participants or who are eligible to participate in programs under this part;

(2) Representatives of older persons;

(3) Representatives of health care provider organizations, including providers of veterans' health care (if appropriate);

(4) Representatives of supportive services providers organizations;

(5) Persons with leadership experience in the private and voluntary sectors;

(6) Local elected officials; and

(7) The general public.

(c) *Review by advisory council.* The area agency shall submit the area plan and amendments for review and comment to the advisory council before it is transmitted to the State agency for approval.

#### § 1321.59 Submission of an area plan and plan amendments to the State for approval.

The area agency shall submit the area plan and amendments to the State agency for approval following procedures specified by the State agency in the State policies prescribed by § 1321.11.

#### § 1321.61 Advocacy responsibilities of the area agency.

(a) The area agency shall serve as the public advocate for the development or enhancement of comprehensive and coordinated community-based systems of services in each community throughout the planning and service area.

(b) In carrying out this responsibility, the area agency shall:

(1) Monitor, evaluate, and, where appropriate, comment on all policies, programs, hearings, levies, and community actions which affect older persons;

(2) Solicit comments from the public on the needs of older persons;

(3) Represent the interests of older persons to local level and executive branch officials, public and private agencies or organizations;

(4) Consult with and support the State's long-term care ombudsman program; and

(5) Undertake on a regular basis activities designed to facilitate the coordination of plans and activities with all other public and private organizations, including units of general purpose local government, with responsibilities affecting older persons in the planning and service area to promote new or expanded benefits and opportunities for older persons; and

(c) Each area agency on aging shall undertake a leadership role in assisting communities throughout the planning and service area to target resources from all appropriate sources to meet the needs of older persons with greatest economic or social need, with particular attention to low income minority individuals. Such activities may include location of services and specialization in the types of services needed by these groups to meet this requirement. However, the area agency may not permit a grantee or contractor under this part to employ a means test for services funded under this part.

(d) No requirement in this section shall be deemed to supersede a prohibition contained in the Federal appropriation on the use of Federal funds to lobby the Congress; or the lobbying provision applicable to private nonprofit agencies and organizations contained in OMB Circular A-122.

#### Subpart D—Service Requirements

##### § 1321.63 Purpose of services allotments under Title III.

(a) Title III of the Older Americans Act authorizes the distribution of Federal funds to the State agency on aging by formula for the following categories of services:

(1) Supportive services;

(2) Congregate meals services;

(3) Home delivered meals services;

(4) In-home services;

(5) Ombudsman services;

(6) Special needs services;

(7) Elder abuse services;

(8) Preventive health services; and

(9) Outreach services.

Funds authorized under these categories are for the purpose of assisting the State and its area agencies to develop or enhance for older persons comprehensive and coordinated community based systems as described in § 1321.53(b) throughout the State.

(b) Except for ombudsman services, State agencies on aging will award the funds made available under paragraph (a) of this section to designated area agencies on aging according to the formula determined by the State agency. Except where a waiver is granted by the State agency, area agencies shall award these funds by grant or contract to community services provider agencies and organizations. All funds awarded to area agencies under this part are for the purpose of assisting area agencies to develop or enhance comprehensive and coordinated community based systems for older persons in, or serving, communities throughout the planning and service area.

##### § 1321.65 Responsibilities of service providers under area plans.

As a condition for receipt of funds under this part, each area agency on aging shall assure that providers of services shall:

(a) Provide the area agency, in a timely manner, with statistical and other information which the area agency requires in order to meet its planning, coordination, evaluation and reporting requirements established by the State under § 1321.13;

(b) Specify how the provider intends to satisfy the service needs of low-income minority individuals in the area served, including attempting to provide services to low-income minority individuals at least in proportion to the number of low-income minority older persons in the population serviced by the provider;



(c) Provide recipients with an opportunity to contribute to the cost of the service as provided in § 1321.67;

(d) With the consent of the older person, or his or her representative, bring to the attention of appropriate officials for follow-up, conditions or circumstances which place the older person, or the household of the older person, in imminent danger;

(e) Where feasible and appropriate, make arrangements for the availability of services to older persons in weather related emergencies;

(f) Assist participants in taking advantage of benefits under other programs; and

(g) Assure that all services funded under this part are coordinated with other appropriate services in the community, and that these services do not constitute an unnecessary duplication of services provided by other sources.

#### § 1321.67 Service contributions.

(a) For services rendered with funding under the Older Americans Act, the area agency on aging shall assure that each service provider shall:

(1) Provide each older person with an opportunity to voluntarily contribute to the cost of the service;

(2) Protect the privacy of each older person with respect to his or her contributions; and

(3) Establish appropriate procedures to safeguard and account for all contributions.

(b) Each service provider shall use supportive services and nutrition services contributions to expand supportive services and nutrition services respectively. To that end, the State agency shall:

(1) Permit service providers to follow either the addition alternative or the cost sharing alternatives as stated in 45 CFR 92.25(g) (2) and (3); or

(2) A combination of the two alternatives.

(c) Each service provider under the Older Americans Act may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule, the provider shall consider the income ranges of older persons in the community and the provider's other sources of income. However, means tests may not be used for any service supported with funds under this part. State agencies, in developing State eligibility criteria for in-home services under section 343 of the Act, may not include a means test as an eligibility criterion.

(d) A service provider that receives funds under this part may not deny any

older person a service because the older person will not or cannot contribute to the cost of the service.

#### § 1321.69 Service priority for frail, homebound or isolated elderly.

(a) Persons age 60 or over who are frail, homebound by reason of illness or incapacitating disability, or otherwise isolated, shall be given priority in the delivery of services under this part.

(b) The spouse of the older person, regardless of age or condition, may receive a home-delivered meal if, according to criteria determined by the area agency, receipt of the meal is in the best interest of the homebound older person.

#### § 1321.71 Legal assistance.

(a) The provisions and restrictions in this section apply only to legal assistance providers and only if they are providing legal assistance under section 307(a)(15) of the Act.

(b) Nothing in this section is intended to prohibit any attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

(c) The area agency shall award funds to the legal assistance provider(s) that most fully meet the standards in this subsection. The legal assistance provider(s) shall:

(1) Have staff with expertise in specific areas of law affecting older persons in economic or social need, for example, public benefits, institutionalization and alternatives to institutionalization;

(2) Demonstrate the capacity to provide effective administrative and judicial representation in the areas of law affecting older persons with economic or social need;

(3) Demonstrate the capacity to provide support to other advocacy efforts, for example, the long-term care ombudsman program;

(4) Demonstrate the capacity to provide legal services to institutionalized, isolated, and homebound older individuals effectively; and

(5) Demonstrate the capacity to provide legal assistance in the principal language spoken by clients in areas where a significant number of clients do not speak English as their principal language.

(d) A legal assistance provider may not require an older person to disclose information about income or resources as a condition for providing legal assistance under this part.

(e) A legal assistance provider may ask about the person's financial

circumstances as a part of the process of providing legal advice, counseling and representation, or for the purpose of identifying additional resources and benefits for which an older person may be eligible.

(f) A legal assistance provider and its attorneys may engage in other legal activities to the extent that there is no conflict of interest nor other interference with their professional responsibilities under this Act.

(g) No provider shall use funds received under the Act to provide legal assistance in a fee generating case unless other adequate representation is unavailable or there is an emergency requiring immediate legal action. All providers shall establish procedures for the referral of fee generating cases.

(1) "Fee generating case" means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party.

(2) Other adequate representation is deemed to be unavailable when:

(i) Recovery of damages is not the principal object of the client; or

(ii) A court appoints a provider or an employee of a provider pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction; or

(iii) An eligible client is seeking benefits under Title II of the Social Security Act, 42 U.S.C. 401, *et seq.*, Federal Old Age, Survivors, and Disability Insurance Benefits; or Title XVI of the Social Security Act, 42 U.S.C. 1381, *et seq.*, Supplemental Security Income for Aged, Blind, and Disabled.

(3) A provider may seek and accept a fee awarded or approved by a court or administrative body, or included in a settlement.

(4) When a case or matter accepted in accordance with this section results in a recovery of damages, other than statutory benefits, a provider may accept reimbursement for out-of-pocket costs and expenses incurred in connection with the case or matter.

(h) A provider, employee of the provider, or staff attorney shall not engage in the following prohibited political activities:

(1) No provider or its employees shall contribute or make available Older Americans Act funds, personnel or equipment to any political party or association or to the campaign of any candidate for public or party office; or for use in advocating or opposing any ballot measure, initiative, or referendum;



(2) No provider or its employees shall intentionally identify the Title III program or provider with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office;

(3) While engaged in legal assistance activities supported under the Act, no attorney shall engage in any political activity;

(i) No funds made available under the Act shall be used for lobbying activities, including but not limited to any activities intended to influence any decision or activity by any nonjudicial Federal, State or local individual or body. Nothing in this section is intended to prohibit an employee from:

(1) Communicating with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies;

(2) Informing a client about a new or proposed statute, executive order, or administrative regulation;

(3) Responding to an individual client's request for advice only with respect to the client's own communications to officials unless otherwise prohibited by the Older Americans Act, Title III regulations or other applicable law. This provision does not authorize publication of lobbying materials or training of clients on lobbying techniques or the composition of a communication for the client's use; or

(4) Making direct contact with the area agency for any purpose;

(5) Providing a client with administrative representation in adjudicatory or rulemaking proceedings or negotiations, directly affecting that client's legal rights in a particular case, claim or application;

(6) Communicating with an elected official for the sole purpose of bringing a client's legal problem to the attention of that official; or

(7) Responding to the request of a public official or body for testimony, legal advice or other statements on legislation or other issues related to aging; provided that no such action will be taken without first obtaining the written approval of the responsible area agency.

(j) While carrying out legal assistance activities and while using resources provided under the Act, no provider or its employees shall:

(1) Participate in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation;

(2) Encourage, direct, or coerce others to engage in such activities; or

(3) At any time engage in or encourage others to engage in:

(i) Any illegal activity; or

(ii) Any intentional identification of programs funded under the Act or recipient with any political activity.

(k) None of the funds made available under the Act may be used to pay dues exceeding \$100 per recipient per annum to any organization (other than a bar association), a purpose or function of which is to engage in activities prohibited under these regulations unless such dues are not used to engage in activities for which Older Americans Act funds cannot be used directly.

#### § 1321.73 Grant related income under Title III-C.

States and sub-grantees must require that their subgrantees' grant related income be used in either the matching or cost sharing alternative in 45 CFR 92.25(g)(2) or the additive alternative in § 92.25(g)(3) or a combination of the two. The deductive alternative described in § 92.25(g)(1) is not permitted.

#### § 1321.75 Licenses and safety.

The State shall ensure:

(a) That, in making awards for multipurpose senior center activities, the area agency will ensure that the facility complies with all applicable State and local health, fire, safety, building, zoning and sanitation laws, ordinances or codes; and

(b) The technical adequacy of any proposed alteration or renovation of a multipurpose senior center assisted under this part, by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility is structurally sound and complies with all applicable local or State ordinances, laws, or building codes.

#### Subpart E—Hearing Procedures for State Agencies

##### § 1321.77 Scope.

(a) Hearing procedures for State plan disapproval, as provided for in section 307(c) and section 307(d) of the Act are subject to the provisions of 45 CFR Part 213 with the following exceptions:

(1) Section 213.1(a); § 213.32(d); and § 213.33 do not apply.

(2) Reference to SRS Hearing Clerk shall be read to mean HHS Hearing Clerk.

(3) References to Administrator shall be read to mean Commissioner on Aging.

(b) Instead of the scope described in § 213.1(a), this subpart governs the procedures and opportunity for a hearing on:

(1) Disapproval of a State plan or amendment;

(2) Determination that a State agency does not meet the requirements of this part;

(3) Determination that there is a failure in the provisions or the administration of an approved plan to comply substantially with Federal requirements, including failure to comply with any assurance required under the Act or under this part.

#### § 1321.79 When a decision is effective.

(a) The Commissioner's decision specifies the effective date for AoA's reduction and withholding of the State's grant. This effective date may not be earlier than the date of the Commissioner's decision or later than the first day of the next calendar quarter.

(b) The decision remains in effect unless reversed or stayed on judicial appeal, or until the agency or the plan is changed to meet all Federal requirements, except that the Commissioner may modify or set aside his or her decision before the record of the proceedings under this subpart is filed in court.

#### § 1321.81 How the State may appeal.

A State may appeal the final decision of the Commissioner disapproving the State plan or plan amendment, finding of noncompliance, or finding that a State agency does not meet the requirements of this part to the U.S. Court of Appeals for the circuit in which the State is located. The State shall file the appeal within 30 days of the Commissioner's final decision.

#### § 1321.83 How the Commissioner may reallocate the State's withheld payments.

The Commissioner disburses funds withheld from the State directly to any public or nonprofit private organization or agency, or political subdivision of the State that has the authority and capacity to carry out the functions of the State agency and submits a State plan which meets the requirements of this part and which contains an agreement to meet the non-federal share requirements.

2. Part 1328 is redesignated as Part 1326 and is revised to read as follows:

#### PART 1326—GRANTS TO INDIAN TRIBES FOR SUPPORT AND NUTRITION SERVICES

##### Sec.

1326.1 Basis and purpose of this part.

1326.3 Definitions.

1326.5 Applicability of other regulations.

1326.7 Confidentiality and disclosure of information.

1326.9 Contributions.



Sec.

- 1326.11 Prohibition against supplantation.
- 1326.13 Supportive services.
- 1326.15 Nutrition services.
- 1326.17 Access to information.
- 1326.19 Application requirements.
- 1326.21 Application approval.
- 1326.23 Hearing procedures.

Authority: 42 U.S.C. 3001; Title VI, Part A of the Older Americans Act.

#### § 1326.1 Basis and purpose of this part.

This program was established to meet the unique needs and circumstances of American Indian elders on Indian reservations. This part implements Title VI (Part A) of the Older Americans Act, as amended, by establishing the requirements that an Indian tribal organization shall meet in order to receive a grant to promote the delivery of services for older Indians that are comparable to services provided under Title III. This part also prescribes application and hearing requirements and procedures for these grants.

#### § 1326.3 Definitions.

"Acquiring," as used in section 307(a)(14) of the Act, means obtaining ownership of an existing facility in fee simple or by lease for 10 years or more for use as a multipurpose senior center.

"Altering" or "renovating," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means making modifications to or in connection with an existing facility which are necessary for its effective use as a center. These may include renovation, repair, or expansion which is not in excess of double the square footage of the original facility and all physical improvements.

"Budgeting period," as used in § 1326.19 of this part, means the intervals of time into which a period of assistance (project period) is divided for budgetary and funding purposes.

"Constructing," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modifications to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

"Department," means the Department of Health and Human Services.

"Indian reservation," means the reservation of any Federally recognized Indian tribe, including any band, nation, pueblo, or rancharia, any former reservation in Oklahoma, any community on non-trust land under the jurisdiction of an Indian tribe, including a band, nation, pueblo, or rancharia,

with allotted lands, or lands subject to a restriction against alienation imposed by the United States, and Alaskan Native regions established, pursuant to the Alaska Native Claims Settlement Act (84 Stat. 688).

"Indian tribe," means any Indian tribe, band, nation, or organized group or community, including any Alaska Native Village, regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b).

"Means test," as used in the provision of services, means the use of an older Indian's income or resources to deny or limit that person's receipt of services under this part.

"Older Indians," means those individuals who have attained the minimum age determined by the tribe for services.

"Project period," as used in § 1326.19 of this part, means the total time for which a project is approved for support, including any extensions.

"Service area," as used in § 1326.9(b) and elsewhere in this part, means that geographic area approved by the Commissioner in which the tribal organization provides supportive and nutritional services to older Indians residing there. A service area may include all or part of the reservation or any portion of a county or counties which has a common boundary with the reservation. A service area may also include a non-contiguous area if the designation of such an area will further the purpose of the Act and will provide for more effective administration of the program by the tribal organization.

"Service provider," means any entity that is awarded a subgrant or contract from a tribal organization to provide services under this part.

"Tribal organization," as used in § 1326.7 and elsewhere in this part, means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities. Provided that in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each Indian tribe shall be a prerequisite to the letting or making of the contract or grant (25 U.S.C. 450b).

#### § 1326.5 Applicability of other regulations.

The following regulations in Title 45 of the Code of Federal Regulations apply to all activities under this part:

- (a) Part 16—Procedures of the Departmental Grant Appeals Board;
- (b) Part 74—Administration of Grants;
- (c) Part 75—Informal Grant Appeals Procedures;
- (d) Part 80—Nondiscrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services: Effectuation of Title VI of the Civil Rights Act of 1964;
- (e) Part 81—Practice and Procedure for Hearings under Part 80 of this Title;
- (f) Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Benefits from Federal Financial Participation; and
- (g) Part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

#### § 1326.7 Confidentiality and disclosure of information.

A tribal organization shall have confidentiality and disclosure procedures as follows:

(a) A tribal organization shall have procedures to ensure that no information about an older Indian or obtained from an older Indian by any provider of services is disclosed by the provider of such services in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal or tribal monitoring agencies.

(b) A tribal organization is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.

#### § 1326.9 Contributions.

- (a) Each tribal organization shall:
  - (1) Provide each older Indian with a free and voluntary opportunity to contribute to the cost of the service;
  - (2) Protect the privacy of each older Indian with respect to his or her contribution;
  - (3) Establish appropriate procedures to safeguard and account for all contributions;
  - (4) Use all services contributions to expand comprehensive and coordinated services systems supported under this part, while using nutrition services contributions only to expand services as provided under section 307(a)(13)(c)(ii) of the Act.



(b) Each tribal organization may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule, the tribal organization shall consider the income ranges of older Indians in the service area and the tribal organization's other sources of income. However, means tests may not be used.

(c) A tribal organization that receives funds under this part may not deny any older Indian a service because the older Indian will not or cannot contribute to the cost of the service.

#### **§ 1326.11 Prohibition against supplantation.**

A tribal organization shall ensure that the activities provided under a grant under this part will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

#### **§ 1326.13 Supportive services.**

(a) A tribal organization may provide any of the supportive services mentioned under Title III of the Older Americans Act, and any other supportive services that are necessary for the general welfare of older Indians.

(b) If an applicant elects to provide multipurpose senior center activities or uses any of the funds under this part for acquiring, altering or renovating a multipurpose senior center facility, it shall comply with the following requirements:

(1) The tribal organization shall comply with all applicable local health, fire, safety, building, zoning and sanitation laws, ordinances or codes.

(2) The tribal organization shall assure the technical adequacy of any proposed alteration or renovation of a multipurpose senior center assisted under this part. The tribal organization assures technical adequacy by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility is structurally sound and complies with all applicable local or State ordinances, laws, or building codes.

(c) If an applicant elects to provide legal services, it shall substantially comply with the requirements in § 1321.71 and legal services providers shall comply fully with the requirements in §§ 1321.71(c) through 1321.71(p).

#### **§ 1326.15 Nutrition services.**

(a) In addition to providing nutrition services to older Indians, a tribal organization may:

(1) Provide nutrition services to the spouses of older Indians;

(2) Provide nutrition services to non-elderly handicapped or disabled Indians

who reside in housing facilities occupied primarily by the elderly, at which congregate nutrition services are provided;

(3) Offer a meal, on the same basis as meals are provided to older Indians, to individuals providing volunteer services during meal hours; and

(4) Provide a meal to individuals with disabilities who reside in a non-institutional household with and accompany a person eligible for congregate meals under that part.

(b) Each tribal organization may receive cash payments in lieu of donated foods for all or any portion of its funding available under section 311(a)(4) of the Act. To receive cash or commodities, the tribal organization shall have an agreement with the U.S. Department of Agriculture's Food and Nutrition Service (FNS) to be a distributing agency.

(c) Where applicable, the tribal organization shall work with agencies responsible for administering other programs to facilitate participation of older Indians.

#### **§ 1326.17 Access to information.**

A tribal organization shall:

(a) Establish or have a list of all services that are available to older Indians in the service area,

(b) Maintain a list of services needed or requested by the older Indians; and

(c) Provide assistance to older Indians to help them take advantage of available services.

#### **§ 1326.19 Application requirements.**

A tribal organization shall have an approved application. The application shall be submitted as prescribed in section 604 of the Act and in accordance with the Commissioner's instructions for the specified project and budget periods. The application shall provide for:

(a) Program objectives, as set forth in section 604(a)(5) of the Act, and any objectives established by the Commissioner.

(b) A description of the geographic boundaries of the service area proposed by the tribal organization;

(c) Documentation of the ability of the tribal organization to deliver supportive and nutrition services to older Indians, or documentation that the tribal organization has effectively administered supportive and nutrition services within the last 3 years;

(d) Assurances as prescribed by the Commissioner that:

(1) A tribal organization represents at least 50 individuals who have attained 60 years of age or older;

(2) A tribal organization shall comply with all applicable State and local

license and safety requirements for the provision of those services;

(3) If a substantial number of the older Indians residing in the service area are of limited English-speaking ability, the tribal organization shall utilize the services of workers who are fluent in the language spoken by a predominant number of older Indians;

(4) Procedures to ensure that all services under this part are provided without use of any means tests;

(5) A tribal organization shall comply with all requirements set forth in § 1326.7 through 1326.17; and

(6) The services provided under this part will be coordinated, where applicable, with services provided under Title III of the Act.

(e) A tribal resolution(s) authorizing the tribal organization to apply for a grant under this part; and

(f) Signature by the principal official of the tribe.

#### **§ 1326.21 Application approval.**

(a) Approval of any application under section 604(e) of the Act, shall not commit the Commissioner in any way to make additional, supplemental, continuation, or other awards with respect to any approved application or portion thereof.

(b) The Commissioner may give first priority in awarding grants to grantees which have effectively administered such grants in the prior year.

#### **§ 1326.23 Hearing procedures.**

In meeting the requirements of section 604(d)(3) of the Act, if the Commissioner disapproves an application from an eligible tribal organization, the tribal organization may file a written request for a hearing with the Commissioner.

(a) The request shall be postmarked or delivered in person within 30 days of the date of the disapproval notice. If it requests a hearing, the tribal organization shall submit to the Commissioner, as part of the request, a full written response to each objection specified in the notice of disapproval, including the pertinent facts and reasons in support of its response, and any and all documentation to support its position. Service of the request shall also be made on the individual(s) designated by the Commissioner to represent him or her.

(b) The Administration on Aging shall have the opportunity to respond with 30 days to the merits of the tribal organization's request.

(c) The Commissioner notifies the tribal organization in writing of the date, time and place for the hearing.



(d) The hearing procedures include the right of the tribal organization to:

(1) A hearing before the Commissioner or an official designated by the Commissioner;

(2) Be heard in person or to be represented by counsel, at no expense to the Administration on Aging;

(3) Present written evidence prior to and at the hearing, and present oral evidence at the hearing if the Commissioner or designated official decides that oral evidence is necessary for the proper resolution of the issues involved, and

(4) Have the staff directly responsible for reviewing the application either present at the hearing, or have a deposition from the staff, whichever the Commissioner or designated official decides.

(e) The Commissioner or designated official conducts a fair and impartial hearing, takes all necessary action to avoid delay and to maintain order and has all powers necessary to these ends.

(f) Formal rules of evidence do not apply to the hearings.

(g) The official hearing transcript together with all papers, documents, exhibits, and requests filed in the proceedings, including rulings, constitutes the record for decision.

(h) After consideration of the record, the Commissioner or designated official issues a written decision, based on the record, which sets forth the reasons for the decision and the evidence on which it was based. The decision is issued within 60 days of the date of the hearing, constitutes the final administrative action on the matter and is promptly mailed to the tribal organization.

(i) Either the tribal organization or the staff of the Administration on Aging may request for good cause an extension of any of the time limits specified in this section.

3. A new Part 1328 is added to read as follows:

**PART 1328—GRANTS FOR SUPPORTIVE AND NUTRITIONAL SERVICES TO OLDER HAWAIIAN NATIVES**

Sec.

- 1328.1 Basis and purpose of this part.
- 1328.3 Definitions.
- 1328.5 Applicability of their regulations.
- 1328.7 Confidentiality and disclosure of information.
- 1328.9 Contributions.
- 1328.11 Prohibition against supplantation.
- 1328.13 Supportive services.
- 1328.15 Nutrition services.
- 1328.17 Access to information.
- 1328.19 Application requirements.
- 1328.21 Application approval.
- 1328.23 Hearing procedures.

Authority: 42 U.S.C. 3001; Title VI Part B of the Older Americans Act.

**§ 1328.1 Basis and purpose of this part.**

This program was established to meet the unique needs and circumstances of Older Hawaiian Natives. This part implements Title VI (Part B) of the Older Americans Act, as amended, by establishing the requirements that a public or nonprofit private organization shall meet in order to receive a grant to promote the delivery of services for older Hawaiian Natives that are comparable to services provided under Title III. This part also prescribes application and hearing requirements and procedures for these grants.

**§ 1328.3 Definitions.**

"Acquiring," as used in section 307(a)(14) of the Act, means obtaining ownership of an existing facility in fee simple or by lease of 10 years or more for use as a multipurpose senior center.

"Act," means the Older Americans Act of 1965, as amended.

"Altering" or "renovating," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means making modifications to or in connection with an existing facility which are necessary for its effective use as a center. These may include renovation, repair, or expansion which is not in excess of double the square footage of the original facility and all physical improvements.

"Budgeting period," as used in § 1328.19 of this part, means the intervals of time into which a period of assistance (project period) is divided for budgetary and funding purposes.

"Constructing," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modifications to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

"Department," means the Department of Health and Human Services.

"Eligible organization," means a public or nonprofit private organization having the capacity to provide services under this part for older Hawaiian Natives.

"Grantee," as used in this part, means an eligible organization that has received funds to provide services to older Hawaiians.

"Hawaiian Native," as used in this part, means any individual any of whose ancestors were native of the area which

consists of the Hawaiian Islands prior to 1778.

"Means test," as used in the provision of services, means the use of an older Hawaiian Native's income or resources to deny or limit that person receipt of services under this part.

"Older Hawaiian," means any individual, age 60 or over, who is an Hawaiian Native.

"Project period," as used in § 1328.19 of this part, means the total time for which a project is approved for support, including any extensions.

"Service area," as used in § 1328.9(b) and elsewhere in this part, means that geographic area approved by the Commissioner in which the grantee provides supportive and nutritional services to older Hawaiian Natives residing there.

**§ 1328.5 Applicability of other regulations.**

The following regulations in Title 45 of the Code of Federal Regulations apply to all activities under this part:

- (a) Part 16-Procedures of the Departmental Grant Appeals Board;
- (b) Part 74-Administration of Grants;
- (c) Part 75-Informal Grant Appeals Procedures;

(d) Part 80-Nondiscrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services: Effectuation of Title VI of the Civil Rights Act of 1964;

(e) Part 81-Practice and procedures for hearings under Part 80;

(f) Part 84-Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Benefits from Federal Financing Participation; and

(g) Part 91-Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

**§ 1328.7 Confidentiality and disclosure of information.**

A grantee shall have confidentiality and disclosure procedures as follows:

(a) The grantee shall have procedures to ensure that no information about an older Hawaiian Native or obtained from an older Hawaiian Native is disclosed in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal monitoring agencies.

(b) A grantee is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.



**§ 1328.9 Contributions.**

- (a) Each grantee shall:
- (1) Provide each older Hawaiian Native with a free and voluntary opportunity to contribute to the cost of the service;
  - (2) Protect the privacy of each older Hawaiian Native with respect to his or her contribution;
  - (3) Establish appropriate procedures to safeguard and account for all contributions;
  - (4) Use all supportive services contributions to expand the services provided under this part; and
  - (5) Use all nutrition services contributions only to expand services as provided under section 307(a)(13)(c)(ii) of the Act.
- (b) Each grantee may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule, the grantee shall consider the income ranges of older Hawaiian Natives in the service area and the grantee's other sources of income. However, means tests may not be used.
- (c) A grantee may not deny any older Hawaiian a service because the older Hawaiian will not or cannot contribute to the cost of the service.

**§ 1328.11 Prohibition against supplantation.**

A grantee shall ensure that the activities provided under a grant under this part will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

**§ 1328.13 Supportive services.**

- (a) A grantee may provide any of the supportive services specified under Title III of the Older Americans Act and any other supportive services, approved in the grantee's application, that are necessary for the general welfare of older Hawaiian Natives.
- (b) If a grantee elects to provide multipurpose senior center activities or uses any of the funds under this part for acquiring, altering or renovating a multipurpose senior center facility, it shall comply with the following requirements:
- (1) The grantee shall comply with all applicable local health, fire, safety, building, zoning and sanitation laws, ordinances or codes.
  - (2) The grantee shall assure the technical adequacy of any proposed alteration or renovation of a multipurpose senior center assisted under this part. The grantee shall assure technical adequacy by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility

is structurally sound and complies with all applicable local or State ordinances, laws, or building codes.

(c) If a grantee elects to provide legal services, it shall substantially comply with the requirements in § 1321.71 and legal services providers shall comply fully with the requirements in §§ 1321.71(c) through 1321.71(p).

**§ 1328.15 Nutrition services.**

- (a) In addition to providing nutrition services to older Hawaiian Natives, a grantee may:
- (1) Provide nutrition services to the spouses of older Hawaiian Natives;
  - (2) Provide nutrition services to non-elderly handicapped or disabled Hawaiian Natives who reside in housing facilities occupied primarily by the elderly, at which congregate nutrition services are provided;
  - (3) Offer a meal, on the same basis as meals are provided to older Hawaiian Natives, to individuals providing volunteer services during meal hours; and
  - (4) Provide a meal to individuals with disabilities who reside in a non-institutional household with and accompany a person eligible for congregate meals under that part.
- (b) Each grantee may receive cash payments in lieu of donated foods for all or any portion of its funding available under section 311(a)(4) of the Act. To receive cash or commodities, the grantee shall have an agreement with the U.S. Department of Agriculture's Food and Nutrition Service (FNS) to be a distributing agency.
- (c) Where applicable, the grantee shall work with agencies responsible for administering other programs to facilitate participation of older Hawaiian Natives.

**§ 1328.17 Access to information.**

- A grantee shall:
- (a) Establish or have a list of all services that are available to older Hawaiian Natives in the service area;
  - (b) Maintain a list of services needed or requested by the older Hawaiians; and
  - (c) Provide assistance to older Hawaiian Natives to help them take advantage of available services.

**§ 1328.19 Application requirements.**

To receive funds under this part, an eligible organization shall submit an application as prescribed in section 623 of the Act and in accordance with the Commissioner's instructions for the specified project and budget periods. The application shall provide for:

- (a) Program objectives, as set forth in section 623(a)(6) of the Act, and any

objectives established by the Commissioner;

(b) A description of the geographic boundaries of the service area proposed by the eligible organization;

(c) Documentation of the organization's ability to serve older Hawaiian Natives;

(d) Assurances as prescribed by the Commissioner that:

- (1) The eligible organization represents at least 50 older Hawaiian Natives who have attained 60 years of age or older;
  - (2) The eligible organization shall conduct all activities on behalf of older Hawaiian natives in close coordination with the State agency and Area Agency on Aging;
  - (3) The eligible organization shall comply with all applicable State and local license and safety requirements for the provision of those services;
  - (4) The eligible organization shall ensure that all services under this part are provided without use of any means tests;
  - (5) The eligible organization shall comply with all requirements set forth in §§ 1328.7 through 1328.17; and
  - (6) The services provided under this part will be coordinated, where applicable, with services provided under Title III of the Act.
- (e) Signature by the principal official of the eligible organization.

**§ 1328.21 Application approval.**

- (a) Approval of any application under section 623(d) of the Act, shall not commit the Commissioner in any way to make additional, supplemental, continuation, or other awards with respect to any approved application or portion thereof.
- (b) The Commissioner may give first priority in awarding grants to eligible applicant organizations that have prior experience in serving Hawaiian Natives, particularly older Hawaiian Natives.

**§ 1328.23 Hearing procedures.**

In accordance with section 623(c)(3) of the Act, if the Commissioner disapproves an application from an eligible organization, the organization may file a written request for a hearing with the Commissioner.

(a) The request shall be postmarked or delivered in person within 30 days of the date of the disapproval notice. If it requests a hearing, the organization shall submit to the Commissioner, as part of the request, a full written response to each objection specified in the notice of disapproval, including the pertinent facts and reasons in support of its response, and any and all



documentation to support its position. Service of the request shall also be made on the individual(s) designated by the Commissioner to represent him or her.

(b) The Administration on Aging shall have the opportunity to respond within 30 days to the merits of the organization's request.

(c) The Commissioner notifies the organization in writing of the date, time and place for the hearing.

(d) The hearing procedures include the right of the organization to:

(1) A hearing before the Commissioner or an official designated by the Commissioner;

(2) Be heard in person or to be represented by counsel, at no expense to the Administration on Aging;

(3) Present written evidence prior to and at the hearing, and present oral

evidence at the hearing if the Commissioner or the Commissioner's designee decides that oral evidence is necessary for the proper resolution of the issues involved, and

(4) Have the staff directly responsible for reviewing the application either present at the hearing, or have a deposition from the staff, whichever the Commissioner or the Commissioner's designee decides.

(e) The Commissioner or the Commissioner's designee conducts a fair and impartial hearing, takes all necessary action to avoid delay and to maintain order and has all powers necessary to these ends.

(f) Formal rules of evidence do not apply to the hearings.

(g) The official hearing transcript together with all papers documents, exhibits, and requests filed in the

proceedings, including rulings, constitutes the record for decision.

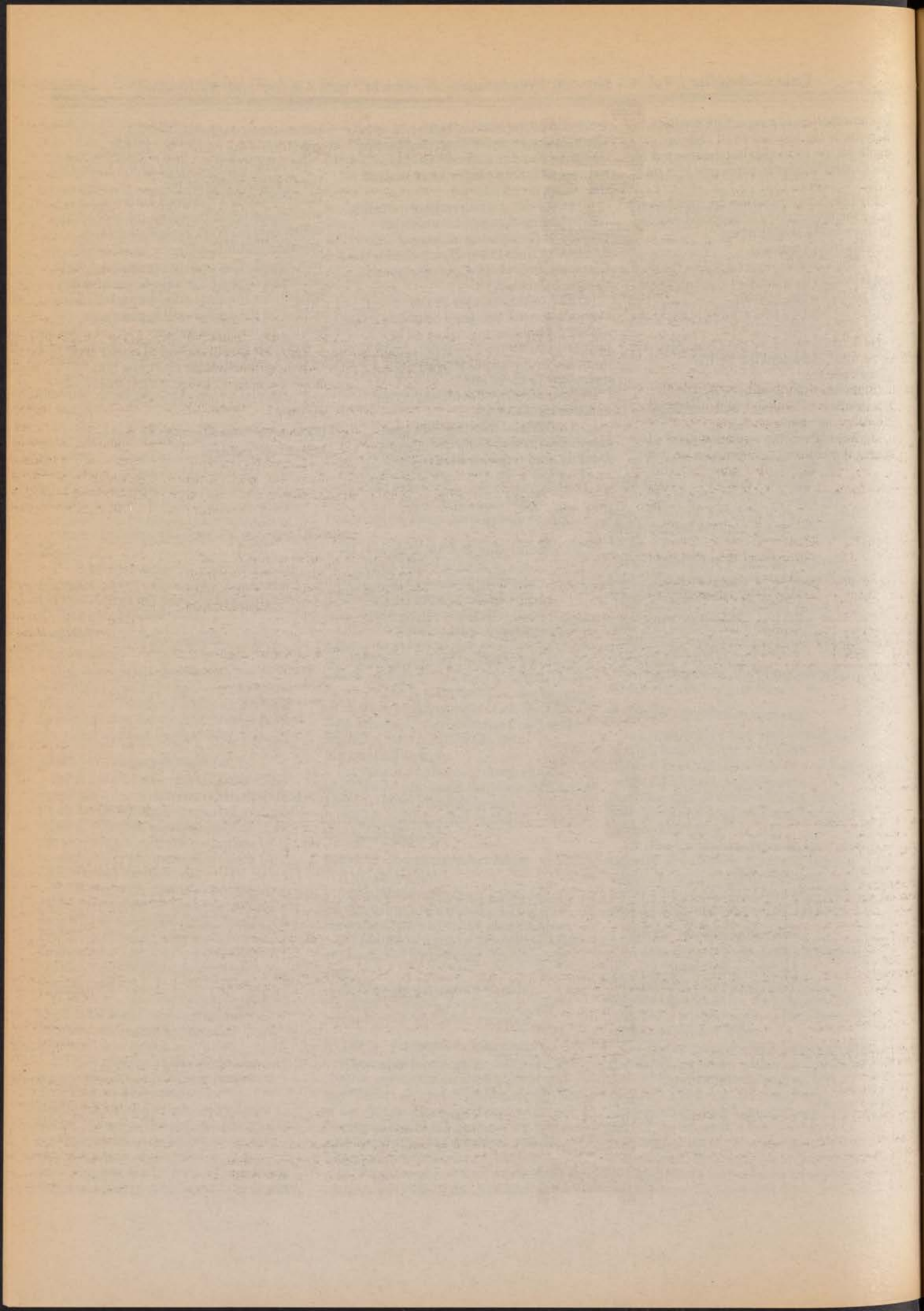
(h) After consideration of the record, the Commissioner or the Commissioner's designee issues a written decision, based on the record, which sets forth the reasons for the decision and the evidence on which it was based. The decision is issued within 60 days of the date of the hearing, constitutes the final administrative action on the matter and is promptly mailed to the organization.

(i) Either the organization or the staff of the Administration on Aging may request, for good cause, an extension of any of the time limits specified in this section.

[FR Doc. 88-19624 Filed 8-30-88; 8:45 am]

BILLING CODE 4130-01-M







# Part 13

Wednesday  
August 31, 1988

## Part VII

## Department of Transportation

### Federal Aviation Administration

#### 14 CFR Part 13

#### Airport-Related Proceedings; Final Rule; Request for Comments



**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 13**

[Docket No. 25687; Amdt. No. 13-17]

**Airport-Related Proceedings****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule; request for comments.

**SUMMARY:** This final rule revises several applicability sections of the investigative and enforcement procedures regarding airport-related proceedings. The revision is intended to update the procedures to refer to the 1982 airport funding statute and recent Congressional amendments to the 1982 Act. This revision is needed to make it clear that the procedural rules for enforcement actions and investigations apply to actions commenced against airports, alleging violations of the 1982 Act, the 1982 Act as amended, and apply to airport grants entered into pursuant to the authority of the 1982 Act, and the 1982 Act as amended.

**DATES:** The final rule is effective on September 30, 1988. Comments must be received on or before September 30, 1988.

**ADDRESS:** Comments on this final rule may be delivered or mailed, in duplicate, to the Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 25687, 800 Independence Avenue SW., Room 915G, Washington, DC 20591. Comments submitted on this final rule must be marked: Docket No. 25687. Comments may be inspected in Room 915G between 8:30 a.m. and 5:00 p.m. on weekdays, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Denise Daniels Ross, Office of the Chief Counsel, Regulations and Enforcement Division, Certification Law Branch (AGC-240), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3491.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

The revisions contained in this final rule are purely procedural revisions that are needed to conform the general applicability sections of Part 13 to existing and recently-enacted statutory authority. Therefore, the final rule is being adopted without notice and an opportunity for prior public comment. However, the Regulatory Policies and

Procedures of the Department of Transportation (44 FR 11034; February 26, 1979) provide that, to the maximum extent possible, Department of Transportation (DOT) operating administrations should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons are invited to participate in the rulemaking by submitting any written data, views, or arguments as they may desire. Comments must include the regulatory docket or amendment number identified in this final rule and be submitted in duplicate to the address above. All comments received will be available in the Rules Docket for examination by interested persons. The rule may be changed in light of the comments received on the final rule.

Commenters who want the Federal Aviation Administration (FAA) to acknowledge receipt of comments submitted on this final rule must submit a preaddressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. 25687." The postcard will be date stamped by the FAA and returned to the commenter. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of Final Rule**

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA-230), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must include the amendment number identified in this final rule. Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**Background**

The revisions contained in this final rule are necessary to update Part 13 to provide expressly that procedural rules for enforcement and investigation apply to all existing statutory authority of the Secretary of Transportation and the Federal Aviation Administration (FAA) concerning airport-related proceedings. Insofar as airport-related proceedings are involved, the current rules in Part 13 refers specifically only to the Airport and Airway Development Act of 1970. The current rule lacks technical reference to the Airport and Airway Improvement Act of 1982 which succeeded the 1970 Act. Similarly, it

lacks reference to the recent amendment of the 1982 Act, the Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub.L. 100-223; December 30, 1987).

The revision of the pertinent applicability sections contained in Part 13 is a minor, conforming, procedural change to those sections. However, the FAA believes that this change should be made to make it clear that the agency may, in investigation and enforcement proceedings, apply Part 13 procedures when airports are charged with violations of the 1982 Act, the 1982 Act as amended, and grants entered into under those statutes, in addition to matters involving the Airport and Airway Development Act of 1970.

**Reason for No Notice**

The revisions contained in this final rule are needed to ensure that the language of the regulations conforms to the statutory authority given to the Secretary in the Airport and Airway Improvement Act of 1982 and continuing amendments enacted by Congress in the Airport and Airway Safety and Capacity Expansion Act of 1987. The final rule is necessary to ensure that due process procedures contained in Part 13 are available to individuals and entities involved in airport-related investigation and enforcement proceedings. Because the final rule merely conforms the regulations to the existing statutory authority provided in the 1982 Act and the 1987 amendments, notice and public comment procedures are unnecessary and thus not required by the Administrative Procedure Act, 5 U.S.C. 553. In addition, publication of a notice for prior public comment on the final rule would not reasonably be anticipated to result in the receipt of useful information regarding the revisions. In accordance with the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979), an opportunity for public comment after publication of the final rule is being provided.

**Economic Assessment**

This final rule makes only minor conforming changes to the procedural regulations contained in Part 13. Because of the editorial and procedural nature of the revisions, no economic impact is expected to result from the promulgation of the final rule. Accordingly, a full Regulatory Evaluation is not warranted and a regulatory evaluation has not been prepared prior to publication of this final rule. Because the final rule is a purely procedural, conforming



amendment and the cost, if any, of complying with the final rule is minimal, I certify that the final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980.

#### Federalism Implications

The final rule contained herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

#### Conclusion

Because the revisions contained in this final rule are not expected to have any economic impact, the FAA has determined that the final rule is not a major regulation under Executive Order 12291. Also, this regulation is not considered to be a significant regulation under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). Since the cost of complying with these rules, if any, is minimal, I certify, under the criteria of the Regulatory Flexibility Act of 1980, that these rules will not have a significant economic impact, positive or negative, on a substantial number of small entities.

#### List of Subjects in 14 CFR Part 13

Enforcement procedures,  
Investigations, Penalties.

#### The Amendment

Accordingly, the Federal Aviation Administration amends Part 13 of the Federal Aviation Regulations (14 CFR Part 13), effective September 30, 1988, to read as follows:

#### PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

1. The authority citation for Part 13 is revised to read as follows:

Authority: 49 U.S.C. 1354 (a) and (c), 1374(d), 1401–1406, 1421–1428, 1471, 1475,

1481, 1482 (a), (b), and (c), and 1484–1489 (Federal Aviation Act of 1958) (as amended, 49 U.S.C. App. 1475, Airport and Airway Safety and Capacity Expansion Act of 1987); 49 U.S.C. App. 1655(c) (Department of Transportation Act) (Revised, 49 U.S.C. 106(g)); 49 U.S.C. 1808, 1809, and 1810 (Hazardous Materials Transportation Act); 49 U.S.C. 1727 and 1730 (Airport and Airway Development Act of 1970); 49 U.S.C. 2218 and 2219 (Airport and Airway Improvement Act of 1982); 49 U.S.C. 2201 (as amended, 49 U.S.C. App. 2218, Airport and Airway Safety and Capacity Expansion Act of 1987); 18 U.S.C. 6002 and 6004 (Organized Crime Control Act of 1970); 49 CFR 1.47 (f), (k), and (q) (Regulations of the Office of the Secretary of Transportation).

2. Section 13.1(a) is revised to read as follows:

##### § 13.1 Reports of violations.

(a) Any person who knows of a violation of the Federal Aviation Act of 1958, as amended, the Hazardous Materials Transportation Act relating to the transportation or shipment by air of hazardous materials, the Airport and Airway Development Act of 1970, the Airport and Airway Improvement Act of 1982, the Airport and Airway Safety and Capacity Expansion Act of 1987, or any rule, regulation, or order issued thereunder, should report it to appropriate personnel of any FAA regional or district office.

\* \* \* \* \*

3. Section 13.3 (a) and the first sentence of (b) are revised to read as follows:

##### § 13.3 Investigations (general).

(a) Under the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1301 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. 1801 *et seq.*), the Airport and Airway Development Act of 1970 (49 U.S.C. 1701 *et seq.*), the Airport and Airway Improvement Act of 1982 (49 U.S.C. 2201 *et seq.*), the Airport and Airway Improvement Act of 1982 (as amended, 49 U.S.C. App. 2201 *et seq.*), Airport and Airway Safety and Capacity Expansion Act of 1987, and the Regulations of the Office of the Secretary of Transportation

(49 CFR 1 *et seq.*), the Administrator may conduct investigations, hold hearings, issue subpoenas, require the production of relevant documents, records, and property, and take evidence and depositions.

(b) For the purpose of investigating alleged violations of the Federal Aviation Act of 1958, as amended (except Title V of that Act), the Hazardous Materials Transportation Act, the Airport and Airway Development Act of 1970, the Airport and Airway Improvement Act of 1982, the Airport and Airway Safety and Capacity Expansion Act of 1987, or any rule, regulation, or order issued thereunder, the Administrator's authority has been delegated to the various services and offices for matters within their respective areas for all routine investigations. \* \* \*

\* \* \* \* \*

4. Section 13.20(a) is revised to read as follows:

##### § 13.20 Orders of compliance, cease and desist orders, orders of denial, and other orders.

(a) This section applies to orders of compliance, cease and desist orders, orders of denial, and other orders issued by the Administrator to carry out the provisions of the Federal Aviation Act of 1958, as amended, the Hazardous Materials Transportation Act, the Airport and Airway Development Act of 1970, and the Airport and Airway Improvement Act of 1982, or the Airport and Airway Safety and Capacity Expansion Act of 1987. This section does not apply to orders issued pursuant to section 602 or section 609 of the Federal Aviation Act of 1958, as amended.

\* \* \* \* \*

Issued in Washington, DC, on 26 August 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88–19847 Filed 8–29–88; 10:03 am]

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Wednesday  
August 31, 1988

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**Part VIII**

**Department of  
Transportation**

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**Federal Railroad Administration**

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**49 CFR Part 218 and 236**

**Automatic Train Control; Departure  
Testing; Prohibiting Tampering With  
Safety Devices; Notice of Proposed  
Rulemaking**



## DEPARTMENT OF TRANSPORTATION

## Federal Railroad Administration

## 49 CFR Part 218

[FRA Docket No. RSOR-10, Notice No. 1]

RIN 2130-AA55

## Prohibiting Tampering With Safety Devices

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** FRA proposes to amend its existing rules concerning railroad operating practices to: (i) Explicitly prohibit tampering with safety devices and operational monitoring devices installed on locomotives and (ii) make it unlawful to operate any train whose devices have been disabled. The FRA is issuing this NPRM because of the grave risks posed by disabled safety devices on trains. The intended effect would be to deter such disabling in the future.

**DATES:** (1) Written comments must be received no later than September 14, 1988. Comments received after that date will be considered to the extent possible without incurring additional delay or expense.

(2) FRA will hold a public hearing on this proposal on September 8, 1988. The hearing will commence at 10:00 a.m. Any person who desires to make an oral statement at the hearing is requested to notify the Docket Clerk at least five working days prior to the hearing.

(3) FRA proposes to issue a final rule in this proceeding no later than September 21, 1988.

**ADDRESSES:** Hearing location—Room 4436 of the Nassif Building located at 400 Seventh Street SW., Washington, DC.

Written comments should be submitted to the Docket Clerk, Office of the Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in Room 8201 of the Nassif Building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Lawrence I. Wagner, Trial Attorney, Office of Chief Counsel, FRA,

Washington, DC (telephone 202-366-0628).

**SUPPLEMENTARY INFORMATION:****Background**

There are approximately 25,000 locomotives in service on the nation's railroads. Many are equipped with one or more devices intended either to record data concerning the unit's operation or to directly improve the safety of its operation. Within this latter category of devices, the range of equipment extends from devices designed to audibly alert a person at the controls to changing conditions to devices that automatically impose sanctions if the operator fails to take appropriate responsive action. The devices of concern in this proceeding include equipment known as "event recorders," "alerter," "deadman controls," "automatic cab signals," "cab signal whistles," "automatic train stop equipment," and "automatic train control equipment."

FRA has historically exercised some degree of regulatory control over nearly all of these devices under the provisions of either its locomotive safety standards or its signal safety standards. Prior to 1987, FRA had little hard evidence of instances in which a train was being operated with these devices in a disabled or impaired condition. During the investigation of the January 4, 1987, Amtrak/Conrail accident at Chase, Maryland, however, FRA found evidence indicating that the effectiveness of two critical safety devices installed on the Conrail locomotive had been impaired. An alerter whistle, designed to warn the operator of a need to respond to a more restrictive signal aspect, had been muted by the use of tape. In FRA's view, disabling of the alerter whistle was a principal cause of the tragedy.

Chase was not the only recent accident in which there is a reason to suspect that the disabling of one of these devices was a causal factor. On February 8, 1986, a collision occurred at Hinton, Alberta, in which a Canadian National freight train struck a VIA Rail passenger train. The Canadian Transport Commission report of investigation contains information suggesting there is evidence to support a conclusion that a "deadman pedal" on the freight train failed to function, and thereby didn't prevent that accident, because it had been improperly nullified. On March 21, 1988, two Chicago & North Western freight trains collided at Dixon, Illinois. In this accident there is preliminary evidence to suggest that one of the automatic train

control devices had been improperly nullified.

Following discovery of the taped whistle at Chase, FRA initiated several nationwide spot checks to determine whether the evidence found at Chase represented an isolated instance or whether it indicated a more widespread problem. During those inspections, FRA inspectors reported more than 100 instances in which they found evidence of deliberate action to negate the proper functioning of one of the identified safety devices.

**Response to the Problem**

These findings prompted FRA to initiate civil penalty action in approximately 70 cases and to make its preliminary information available to Congress, which was then considering adoption of rail safety legislation. The following is a summary of what occurred in both contexts.

Those inspectors who had observed instances of what they believed to be "tampering" reduced their observations to writing and filed violation reports with FRA's Office of Chief Counsel recommending assessment of civil penalties against the relevant railroads. Subsequent detailed review of the reports led FRA to conclude that some 70 observations warranted further action because the available evidence supported a conclusion that FRA could establish at least a prima facie case of noncompliance with an FRA rule.

In each of these instances, FRA instituted legal action to impose a civil penalty against the railroad that had operated or permitted to be operated a locomotive with a device in noncompliance with this existing rule. Since, at that time, FRA lacked authority to impose any sanctions against an individual for either operating a train with a disabled device or for the more serious situation of actually disabling the device, FRA took the indirect approach of holding the principal, the railroad, responsible for the conduct of its employees and relied on the railroad to take disciplinary action against the individual.

Concluding that FRA's legal authority to respond to such situations should be enhanced, Congress passed the Rail Safety Improvement Act of 1988 granting FRA enforcement authority over individuals. With that authority, FRA can now assess civil penalties against individuals for willful violations of FRA rules. FRA has recently issued interim rules and an interim policy statement detailing the manner in which it will implement this new civil penalty authority. These changes became



effective on August 1, 1988. (See the July 28, 1988, issue of the *Federal Register*; 53 FR 28594).

#### The Statutory Requirement

Section 21 of the RSIA requires that within 90 days of the law's enactment, FRA adopt regulations addressing three related but distinct aspects of the problem. It requires that FRA make it unlawful for: (1) Any individual to willfully tamper with or disable a device; (2) any individual to operate or permit to be operated a train with a tampered or disabled device; and (3) any railroad to operate such a train. Note that the statute sets forth three distinct levels of culpability for instances in which a device has been tampered with or disabled.

#### FRA's Proposal

Since the principal thrust of the provisions is directed at train operations, and since the legislative concepts are difficult to reconcile with FRA's existing regulatory approaches to locomotive-mounted equipment under the locomotive and signal rules (see 49 CFR Parts 229 and 236), FRA proposes to place these rules in its existing set of provisions concerning railroad operating practices (49 CFR Part 218). FRA proposes to add a new subpart to its existing rules and to recite the purpose of the subpart in the initial section of this subpart (see proposed § 218.101). FRA is also proposing to adopt three separate sections that respond to the three distinct aspects of the statute.

#### Section-by-Section Analysis

Proposed § 218.103 contains the substantive provision that addresses the first of the statutory objectives: prohibiting conduct that nullifies the effectiveness of these safety devices. It is structured to preclude all actions or inactions that would result in a device's not functioning as intended. Hence, it prohibits a wide range of actions such as removing recording tapes from event recorders, taping alerter whistles so as to mute them, and unplugging or disconnecting wires that result in signal-related devices not activating brake systems.

FRA's proposed wording for this provision contains the statutory formulation of culpability for such conduct. Under the statute and FRA's proposal, an individual must be engaged in "willful" behavior in order for FRA to assess a civil penalty against that person. As FRA previously stated in its policy statement (see the July 28, 1988 issue of the *Federal Register*), FRA considers a "willful" act to be one that is an intentional, voluntary act

committed either with knowledge of the relevant law or with reckless disregard for whether the act violated the requirements of the law. Accordingly, a showing of neither evil purpose (as is sometimes required in criminal law) nor actual knowledge of the law is necessary before FRA can prove that the conduct constitutes a violation. However, a level of culpability higher than simple negligence must be demonstrated. In summary, to access a civil penalty, FRA would need proof that the individual had intended to disable one of these devices, had acted voluntarily, had in fact disabled the device, and either had knowledge of the law or had recklessly disregarded the law.

This provision gives FRA an effective way to respond to those individuals who consciously place themselves and others at risk by defeating the very safety devices that were installed to improve the safety of all concerned. FRA anticipates that as a matter of policy, FRA will seek to have the responsible individual disqualified from holding any safety-sensitive function, whenever it encounters situations where there is clear evidence of tampering. The message that the individual is now placing his or her employment in railroad operations on the line, in addition to placing their life on the line by such conduct, hopefully will help deter such conduct in the future. FRA reserves the right to both disqualify those who willfully tamper with safety devices and to impose a civil penalty for such conduct.

FRA proposes in § 218.105 to address the second situation identified in the statute: instances in which one individual tampers with the device and a second individual knowingly operates or permits to be operated the disabled or tampered with unit. The most common occurrence addressed by this provision would be instances in which a train crew encounters a locomotive with a safety device that has been tampered with prior to the crew's assuming responsibility for the locomotive. Under the statutory ("knowingly operates or permits to be operated") and proposed regulatory wording of this provision, individuals would be held to a simple negligence standard of conduct. The responsible members of that crew would be culpable if either: (1) Due to their failure to exercise reasonable care, they failed to determine that the safety device was not functioning, or (2) having ascertained that the device was not functioning, still elected to operate the train. Railroad supervisors who permit or direct that a train with a disabled device be operated after having learned

that the safety device is not functioning would also be subject to sanction.

As a matter of policy, if FRA encounters situations where there is clear evidence that an individual willfully operated a train after some other person had nullified a safety device, FRA will consider disqualifying that individual from holding a safety-sensitive function on the railroad.

FRA proposes in § 218.107 to address the third situation identified by the statute: instances in which a railroad operates a train with a disabled or tampered with unit. This provision makes the railroad strictly liable for the conduct of its employees when they operate a train with a disabled device. Under the strict liability standard of conduct, FRA will not be obligated to prove any level of knowledge or intent on the part of the railroad. Once FRA can prove that a train with a disabled device operated on that railroad, FRA has a legal basis for imposing a civil penalty for that conduct.

Finally, FRA is proposing to add several new definitions to existing § 218.5. Unlike most definitions, which are intended to provide a clear and uniform frame of reference for those whose have to use this rule, FRA is proposing to employ these new definitions to meld this proposal with FRA's existing regulatory provisions concerning safety devices mounted on locomotives and to ameliorate some of the regulatory anomalies inherent in the statute.

The devices that are of concern in this proceeding are currently addressed either by FRA's locomotive regulations (49 CFR Part 229) or by its signal rules (49 CFR Part 236). On-board devices that are not integrated with a railroad's signal system are covered by FRA's locomotive rules. Although FRA does not require any railroads to equip their locomotives with "deadman controls," "alerter," or "event recorders," when a locomotive is so equipped, FRA makes it unlawful for the railroad to use the unit unless such appurtenances are in proper condition (§ 229.7). In the signal systems arena, FRA does require that railroads install signal systems in some instances, thus indirectly requiring the installation of locomotive-mounted signal devices (see § 236.0). In other instances, railroads have elected to install such systems on their own initiative. In either case, once a railroad installs a signal system that employs cab signals, automatic train stop, automatic train control, or a combination of those systems, the railroad is obligated to have the controlling locomotive of trains traversing equipped territory outfitted



with a functioning device responsive to the system installed on the wayside. Both sets of rules require that the relevant devices installed on a locomotive be inspected to determine their condition (see §§ 229.21 and 236.586).

Because of differences in the nature of the equipment and the operational safety implications for diverse types of noncomplying conditions, FRA accords different regulatory treatment to locomotives under each rule. The minor differences in the manner in which FRA calculates the roughly 24-hour intervals at which locomotives must be inspected and the permissible courses of action when a railroad encounters defective conditions are relevant in the context of this proposal.

There are two special situations which also need to be addressed. The first involves instances in which a railroad could legitimately assert that the functioning of a device has become a distraction and hence a detriment to safety. FRA has encountered this argument in situations where alerter or deadman controls have been nullified while the locomotive was used exclusively to perform yard switching service. FRA also believes that there is a need to address what will be a fairly common problem for individuals who are conscientiously trying to comply with the requirements of proposed § 218.105. That section implicitly requires that train crew members determine that their safety devices are functioning. FRA is alert to the fact that certain operational realities will result either in the physical separation of some train crew members from the locomotive on which the devices are mounted or in crew members mounting equipment at a crew change location while the equipment is constantly moving at a slow speed. In such settings, there simply may not be a practical alternative method for affording people an appropriate opportunity to determine the condition of the locomotive's safety devices.

FRA proposes to address all of these concerns by defining the phrase "operate a train" in terms of conducting train airbrake tests. Under this approach, responsibility for compliance with both § 218.105 and § 218.107 would occur only if FRA rules would have imposed a duty on the crew and the railroad to perform either an initial terminal airbrake test or an intermediate terminal air brake test. In both situations, there would be ample opportunity to determine that the devices were indeed functioning and would permit devices to be nullified for

true switching operations. It would also appropriately meld the enroute defect provisions of FRA's locomotive and signal rules, while retaining their valid distinctions for daily inspection intervals. FRA proposes to place this definition in a new paragraph (o) in § 218.5.

FRA also proposes to define both types of locomotive-mounted devices this rule would apply to and to specify the kinds of conduct that would constitute tampering under this rule. In both cases, FRA is proposing fairly expansive definitions. In this way, FRA intends to capture under this rule devices currently in service as well as those that may appear in the near future (particularly those associated with advanced train control systems now in the research and development stages) and to cover all means by which one could defeat such systems. FRA proposes to place these in paragraphs (p) and (n), respectively, of § 218.5.

#### Public Participation

FRA proposes to amend Part 218 as set forth below. FRA solicits comments on all aspects of the proposed rule, whether through written comments or through participation in the public hearing. FRA may make changes in the final rule based on comments received in response to this proposal. All potential commenters are reminded that the statute mandates issuance of rules on this subject within 90 days of enactment of the legislation. Since FRA must issue such a rule no later than September 21, 1988, only a minimum period for public comment is being provided in this proceeding.

The final rule in this proceeding will include a revised penalty schedule for Part 218 reflecting the higher maximum penalties now available and adding entries for the new sections proposed herein. See the recent revisions to the penalty provisions and penalty schedule of Part 218 required by the RSIA published in the *Federal Register* on July 28, 1988 (53 FR 28594). Because FRA's penalty schedules are statements of policy, notice and comment are not required to revisions of those schedules (see 5 U.S.C. 553(b)(3)(A)). Nevertheless, interested parties are welcome to submit their views on what penalties may be appropriate.

#### Regulatory Impact

##### *E.O. 12291 and DOT Regulatory Policies*

This proposed rule has been evaluated in accordance with existing policies and procedures. The proposal is considered to be non-major under Executive Order 12291 but a significant

proposal under the Department's policies and procedures (44 FR 11034, February 26, 1979).

The proposed rule would not have any direct or indirect economic impact because it does not impose any additional regulatory burden on either railroads or individuals. To the degree that potential imposition of a civil penalty serves as a deterrent to individuals who might contemplate disabling one of these devices, the proposed rule might serve to reduce expenses by avoidance of exposure to accidents that can be prevented or minimized by a functioning device. FRA welcomes any comments on this issue.

#### Regulatory Flexibility Act

These proposed regulations will not have any economic impact on small entities. FRA therefore certifies that this proposal will not have a significant impact on a substantial number of small entities.

#### Paperwork Reduction Act

The regulations proposed in this notice do not contain directly or indirectly any information collection requirements.

#### Comment Period

Section 21 of the Rail Safety Improvement Act of 1988 (Pub. L. 100-342) requires that these regulations be issued by September 21, 1988. Accordingly, the period provided for public comment on this notice must close before that date. Normally, a minimum of 30 days is provided for public comments on rulemaking proposals. In this case, as a result of the complexity of developing a notice of proposed rulemaking, this proposed rule is not being published more than 30 days prior to the statutory limit. However, the proposal was placed on public display at the Federal Register as early as possible, and a substantial comment period has been provided. In consideration of the statutory 30-day limit of September 21, FRA finds that good cause exists to publish this notice with a comment period of less than 30 days.

#### Environmental Impact

These proposed rules will not have any identifiable environmental impact.

#### Federalism Implications

These proposed rules will not have a substantial effect on the states, on the relationship between the states and the national government, or on the distribution of power and responsibilities among the various levels



of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

#### List of Subjects in 49 CFR Part 218

Railroad safety, Railroad operating practices.

#### The Proposed Rule

Therefore, in consideration of the foregoing, FRA proposes to amend Part 218, Title 49, Code of Federal Regulations as follows:

#### PART 218—[AMENDED]

1. The authority citation for Part 218 continues to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49(m).

2. By amending the table of contents to add Subpart D as follows:

#### Subpart D—Prohibition Against Tampering With Safety Devices

- 218.101 Purpose and scope.
- 218.103 Tampering prohibited.
- 218.105 Responsibilities of individuals.
- 218.107 Responsibilities of railroads.

3. Amend § 218.5 by adding new paragraphs (n), (o), and (p) to read as follows:

#### § 218.5 Definitions.

(n) "Disable" means to render a device incapable of proper and effective action or to materially impair the functioning of the device.

(o) "Operate a train" means to move a locomotive or group of locomotives coupled to one or more cars after the occurrence of any event identified in Part 232 of this Chapter that requires the performance of a train air brake test in order to comply with that Part.

(p) "Safety device" means any locomotive-mounted equipment that is used either to assure that the locomotive operator is alert, not physically incapacitated, aware of and complying with the operational directives of a signal system or other operational control system or to record data concerning the operation of that locomotive or the train it is powering.

4. Add Subpart D, consisting of §§ 218.101 through 218.107.

#### Subpart D—Prohibition Against Tampering With Safety Devices

##### § 218.101 Purpose and scope.

(a) The purpose of this subpart is to prevent accidents and casualties that can result from the operation of trains that are equipped with safety devices intended to improve the safety of their

movement that have been nullified through unauthorized human intervention.

(b) This subpart establishes the standards of conduct for railroads and individuals when locomotives are equipped with such devices.

##### § 218.103 Tampering prohibited.

Any individual who willfully disables or materially impairs the functioning of a safety device is subject to a civil penalty of up to \$20,000, as provided for in Appendix A of this part, and is subject to disqualification from performing safety-sensitive functions on a railroad if found unfit for such duties.

##### § 218.105 Responsibilities of individuals.

When the controlling locomotive of a train is equipped with a disabled or materially impaired safety device, any individual who knowingly operates that train or permits it to be operated is subject to a civil penalty as provided for in Appendix A of this part and is subject to disqualification from performing safety-sensitive functions on a railroad if found to be unfit for duties.

##### § 218.107 Responsibilities of railroads.

When the controlling locomotive of a train is equipped with a disabled safety device, any railroad that operates that train is subject to a civil penalty as provided for in Appendix A of this part.

Issued in Washington, DC on August 26, 1988.

John H. Riley,

Federal Railroad Administrator.

[FR Doc. 88-19760 Filed 8-29-88; 10:24 am]

BILLING CODE 4910-26-M

#### 49 CFR Part 236

[FRA Docket No. SI-5, Notice No. 1]

#### Automatic Train Control; Departure Testing

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In response to section 9 of the Rail Safety Improvement Act of 1988, FRA proposes to amend its railroad signal regulations (49 CFR Part 236) to require that whoever performs any test required by FRA rules of an automatic train stop, train control, or cab signal apparatus prior to entering territory where such apparatus will be used shall certify in writing that such test was properly performed. The certification will be kept and maintained in the same manner and place as the daily inspection report for that locomotive.

FRA is issuing this NPRM to address the need to assure that train control devices are operating before a train departs. The intended effect would be to improve the safety of rail operations.

**DATES:** (1) A public hearing regarding this proposed rule will begin at 10:00 a.m. on September 9, 1988. Any persons who desire to make a statement at the hearing should submit their prepared statements to the Docket Clerk at least five days before the hearing date.

(2) Written comments must be received no later than September 14, 1988. Comments received after that date will be considered to the extent possible without incurring additional delay or expense.

(3) FRA proposes to issue a final rule in this proceeding no later than September 21, 1988.

**ADDRESSES:** (1) Hearing location—Room 4234, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

(2) Written comments should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590.

#### FOR FURTHER INFORMATION CONTACT:

S.H. Stotts, Jr., Chief, Standards Division, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202-366-0495), or Mark Tessler, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202-366-0628).

**SUPPLEMENTARY INFORMATION:** On June 22, 1988, the President signed into law the Rail Safety Improvement Act of 1988 (RSIA) (Pub. L. 100-342). Section 9 of the RSIA amends section 202 of the Federal Railroad Safety Act of 1970 by adding new subsections (j), (k), and (l) dealing with automatic train control and related systems.

New subsection 202(j) provides for the issuance of rules as may be necessary to require that "(1) whoever performs any test required by the Secretary of an automatic train stop, train control, or cab signal apparatus prior to entering territory where such apparatus will be used, shall certify in writing that such test was properly performed; and (2) that such certification shall be kept and maintained in the same manner and place as the daily inspection report for that locomotive."

Present FRA regulations governing testing of ATC and related safety systems are found at 49 CFR 236.587. Subsection (a) establishes the types of tests that are permissible, (b) establishes when the test are required (on departure from an initial terminal or upon entering equipped territory) and (c) states how often the tests are required



(maximum of once every 24 hours). Subsection (d) currently states: "If a departure test is made by an employee, other than the engineer, the engineer shall be informed of the results of the test and the a record kept thereof."

FRA proposes to amend § 236.587 by revising subsection (d) to require that everyone, including engineers, performing the test certify in writing that that test was properly performed. The certification and the results of the test will be posted in the cab of the locomotive in the same manner as is presently done for daily locomotive inspections under 49 CFR Part 229.

Under current practice, the departure test results are retained if the test is performed by someone other than the engineer. The individual performing the test would normally carry a copy of the test results off the locomotive for filing with his or her supervisory official. The proposed rule change ensures the consistency of this procedure, whether the test is performed by an engineer or some other individual, by requiring that the certification and test results be left at the test location for filing with the appropriate supervisory official.

Paragraph "b" requires a test on departure from an initial terminal unless ATC or related safety systems will be cut out between the initial terminal and equipped territory. If the apparatus is cut out between the initial terminal and the equipped territory the test must be made prior to entering equipped territory. In that case, and in the situation where a locomotive's initial terminal does not have a railroad office, the engineer will be permitted to transmit the test information to the dispatcher, who will keep a written record of the test results and the name of the employee performing the test. Thus, in all situations, a copy of the test results and certification would be in both the locomotive cab and a railroad office, thereby ensuring the integrity of the records.

FRA is also proposing a technical change to § 236.110. This section governs the manner in which railroad signal test results are recorded and filed by the railroad. FRA proposes to require that § 236.110 apply to tests made in compliance with § 236.587. This will provide consistent treatment of all railroad signal test results required under Part 236.

### Regulatory Impact

FRA has evaluated the proposed action and its potential impacts in accordance with existing regulatory policies. It is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

FRA has further concluded that the proposed rule will have no significant impact on the environment.

The proposed rule has information collection requirements. FRA is submitting these information collection requirements to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980. Any comments on these revised information collection requirements should be provided to Mr. Gary Waxman, Regulatory Policy Branch, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Washington, DC 20503. Copies of any such comments should also be submitted to the docket of this rulemaking at the address provided above.

The proposed rule would not have substantial effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

### Request for Public Comment

FRA proposes to amend 49 CFR Part 236 as set forth below. FRA solicits comments on the proposed rule change, whether through written submissions, or participation in the public hearing, or both. FRA may make changes in the final rule based on information comments received in response to this notice. Section 9 of the RSIA requires that these regulations be issued by September 21, 1988. Accordingly, the period provided for public comment on this notice must close before that date. Normally, a minimum of 30 days is provided for public comments on rulemaking proposals. In this case, as a result of the complexity of developing a notice of proposed rulemaking, this proposed rule is not being published more than 30 days prior to the statutory limit. However, the proposal was placed

on public display at the Federal Register as early as possible, and a substantial comment period has been provided. In consideration of the statutory 30-day limit of September 21, FRA finds that goods cause exists to publish this notice with a comment period of less than 30 days.

### List of Subjects in 49 CFR Part 236

Railroad safety, Signal systems.

### The Proposed Rule

Therefore, in consideration of the foregoing, FRA proposes to amend 49 CFR Part 236 as follows:

### PART 236—[AMENDED]

1. The authority citation for Part 236 continues to read as follows:

Authority: 49 App. U.S.C. 28, as amended; 49 App. U.S.C. 1655(e), as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49 (f), (g), and (m).

2. By revising the first sentence of § 236.110 to read as follows:

#### § 236.110 Results of tests.

Results of tests made in compliance with §§ 236.102 to 236.109, inclusive; 236.376 to 236.387, inclusive; 236.576; 236.577; and 236.586 to 236.589, inclusive, shall be recorded on preprinted or computerized forms provided by the railroad. \* \* \*

3. By revising § 236.587(d) to read as follows:

#### § 236.587 Departure test.

(d)(1) Whoever performs the test shall certify in writing that such test was properly performed. The certification and the test results shall be posted in the cab of the locomotive and a copy of the certification and test results left at the test location for filing in the office of the supervisory official having jurisdiction.

(2) If it is impractical to leave a copy of the certification and test results at the location of the test, the test results shall be transmitted to the dispatcher who shall keep a written record of the test results and the name of the person performing the test.

Issued in Washington, DC on August 26, 1988.

John H. Riley,  
Administrator.

[FR Doc. 88-19761 Filed 8-29-88; 10:24 am]

BILLING CODE 4910-06-M



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August 31, 1988

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## Part IX

### Department of the Interior

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#### Fish and Wildlife Service

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##### 50 CFR Part 20

**Migratory Bird Hunting; Early Seasons,  
Bag Limits and Possession of Certain  
Migratory Game Birds in the Contiguous  
United States, Alaska, Hawaii, Puerto  
Rico and the Virgin Islands; Final Rule**



## Department of the Interior

## Fish and Wildlife Service

## 50 CFR Part 20

**Migratory Bird Hunting; Early Seasons, Bag Limits and Possession of Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico and the Virgin Islands**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits of mourning doves, white-winged and white-tipped doves, band-tailed pigeons, rails, woodcock, common snipe, common moorhens and purple gallinules; sea ducks in certain defined areas of the Atlantic Flyway; wood ducks in September in Florida, Kentucky and Tennessee; Canada geese in September in parts of Illinois, Michigan and Minnesota; sandhill cranes in the Central and Pacific Flyways; a special Canada goose season in Southwestern Wyoming; migratory game birds in Alaska, Puerto Rico and the Virgin Islands; and extended falconry seasons during 1988-89. The taking of these migratory birds is prohibited unless hunting seasons are specifically provided. The rules will permit the hunting of these species within specified periods of time beginning as early as September 1, as has been the case in past years.

**DATE:** Effective on August 31, 1988.

**FOR FURTHER INFORMATION CONTACT:** Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of Interior, Room 536, Matomic Building, 1717 H Street NW., Washington, DC, telephone 202-254-3207.

**SUPPLEMENTARY INFORMATION:** The Migratory Bird Treaty Act of July 3, 1918, (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended, authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

On March 9, 1988, the U.S. Fish and Wildlife Service (hereinafter the Service) published for public comment

in the Federal Register (53 FR 7702) a proposal to amend 50 CFR Part 20, with comment periods ending June 22, 1988, for Alaska, Hawaii, Puerto Rico, and the Virgin Islands; July 18, 1988, for other early-season proposals; and August 25, 1988, for the late-season proposals. The March 9 document dealt with the establishment of hunting seasons, hours, areas and limits for migratory game birds under § 20.101 through 20.107, 20.109 and 20.110 of Subpart K. On June 7, 1988, the Service published in the Federal Register (53 FR 20874) a second document consisting of a supplemental proposed rulemaking dealing with both the early- and late-season frameworks. On July 11, 1988, the Service published for public comment in the Federal Register (53 FR 26198) a third document consisting of a proposed rulemaking dealing specifically with frameworks for early-season migratory bird hunting regulations. The document also reopened and extended the comment period for the proposed frameworks for Alaska, Puerto Rico and Virgin Islands from June 22, 1988, to July 20, 1988. All three documents, March 9, June 7, and July 11, indicated that special consideration was being given to possible restrictive regulations for all aspects of the 1988-89 hunting season dependent upon the continuing poor status of ducks. On August 9, 1988, the Service published a fourth document (53 FR 29897) containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the State, Puerto Rico and the Virgin Islands selected early-season hunting dates, hours, areas and limits for 1988-89. The fifth document in the series deals specifically with proposed frameworks for the 1988-89 late-season migratory bird hunting regulations. The final rule described here is the sixth in a series of proposed, supplemental and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending Subpart K of 50 CFR Part 20 to set hunting seasons, hours, areas and limits for mourning doves, white-winged and white-tipped doves, band-tailed pigeons, rails, woodcock, snipe, and common moorhens and purple gallinules; sea ducks in certain defined areas of the Atlantic Flyway; wood ducks in September in Florida, Kentucky and Tennessee; Canada geese in September in parts of Illinois, Michigan and Minnesota; sandhill cranes in the Central and Pacific Flyway; a special Canada goose season in southwestern Wyoming; migratory game birds in Alaska, Puerto Rico and the Virgin Islands; and extended falconry seasons.

## Nontoxic Shot Regulations

In the June 28, 1988 Federal Register (53 FR 24284), the Service published a final rule describing zones in which use of lead shot would be prohibited for hunting waterfowl, coots and certain other species in the 1988-89 hunting season. Waterfowl hunters are advised to become familiar with State and local regulations regarding the use of nontoxic shot for waterfowl hunting.

## NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)", filed with CEQ on June 9, 1988. Notices of Availability were published in the Federal Register on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727), and the Service's Record of Decision was published on August 18, 1988 (53 FR 31341).

## Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" [and shall] "insure that any action authorized, funded or carried out \* \* \* is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or modification of [critical] habitat \* \* \*."

Subsequently, the Service initiated Section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 17, 1988, the Division of Endangered Species and Habitat Conservation gave a biological opinion that the proposed actions were not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species.

The Service's biological opinion resulting from its consultation under section 7 is considered a public document and is available for inspection in the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.



# Regulatory Flexibility Act, Executive Order 12291 and the Paperwork Reduction Act

In the *Federal Register* dated March 9, 1988, (53 FR 7702), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. These regulations contain no information collections subject to Office of Management and Budget under the Paperwork Reduction Act of 1980.

## Memorandum of Law

The Service published its Memorandum of Law, required by section 4 of Executive Order 12291, in the *Federal Register* dated August 9, 1988, (53 FR 29897).

## Authorship

The primary author of this rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

## Regulations Promulgation

After analysis of migratory game bird survey data obtained through investigations conducted by the Service, State conservation agencies, and other sources, and consideration of all comments received on the early proposals (53 FR 7702, March 9, 1988; 53 FR 20874, June 7, 1988; and 53 FR 26198, July 11, 1988), the Service published in the *Federal Register* on August 9, 1988, (53 FR 29897) final early-season frameworks for the United States, including Alaska and Hawaii, and Puerto Rico and the Virgin Islands. Copies of the final frameworks were sent to the officials of the State conservation agencies and to conservation agency officials in Puerto Rico and the Virgin Islands who were invited to submit recommendations for hunting seasons which complied with the season times and lengths, hours, areas and limits specified in the frameworks.

The taking of the designated species of migratory birds is prohibited unless

open hunting seasons are specifically provided. The following amendments will permit taking of the designated species within specified time periods beginning as early as September 1, as has been the case in past years.

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when proposed rulemakings were published on March 9, June 7, and July 11, 1988, the Service established what it believed were the longest periods possible for public comment. In doing this the Service recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select their season dates, shooting hours, hunting areas and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions. The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) (Administrative Procedure Act), and these regulations will, therefore, take effect immediately upon publication.

Accordingly, with each State conservation agency have had an opportunity to participate in selecting the hunting seasons desired for its State on those species of migratory birds for which open seasons are now to be prescribed, and consideration having been given to all other relevant matters presented, certain sections of Title 50, Chapter I, Subchapter B, Part 20, Subpart K, are amended as set forth below.

## List of Subjects in 50 CFR Part 20

Exports, Hunting Imports, Transportation, Wildlife.

For these reasons set out in the preamble, Title 50, Chapter I, Subchapter B, Part 20, Subpart K, is amended as follows:

## PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

**Authority:** Migratory Bird Treaty Act, sec. 3, Pub. L. 65-186, 40 Stat. 755 (16 U.S.C. 701-708h); sec. 3(h), Pub. L. 95-616, 92 Stat. 3112 (16 U.S.C. 712); Alaska Game Act of 1925, 43 Stat. 739, as amended, 54 Stat. 1103-04.

**Note.**—The following annual hunting regulations provided for by §§ 20.101 through 20.106 and 20.109 of 50 CFR Part 20 will not

appear in the Code of Federal Regulations because of their seasonal nature.

2. Section 20.101 is revised to read as follows:

## § 20.101 Seasons, limits and shooting hours for Puerto Rico and the Virgin Islands.

Subject to the applicable provisions of the preceding sections of this part, the open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits, and areas for hunting the species designated in this section are prescribed as follows:

### (a) Puerto Rico.

	Doves	Pigeons
Daily bag limit.....	10 singly or in the aggregate of all permitted species.	5
Possession limit.....	10 singly or in the aggregate of all permitted species.	5
Season dates.....	Sept. 3 to Nov. 7, 1988.	
Shooting hours.....	One-half hour before sunrise to sunset daily.	

**Restrictions:** Only the following species of doves and pigeons may be hunted during the open season: Zenaida dove—*Tortola cardosantana*; white-winged dove—*Tortola aliblanca cubanita*; mourning dove—*Tortola rabilarga o rebiche*; and scaly-naped pigeon—*Paloma turca o torcaz*.

## Closed Areas

No season is prescribed for doves and pigeons on Mana Island in order to give the reduced population of white-crowned pigeon (*Columba leucocephala*), known locally as Paloma cabeciblanca, a chance to recover.

No season is prescribed for doves and pigeons in the Municipality of Culebrala and on Desecheo Island.

No season is prescribed in the El Verde Closure Area consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one (1) kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National



Forest Boundary whether private or public.

No season is prescribed for doves and pigeons of any species in all of Cidra Municipality and in portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavata, west along the Rio Guavata to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning.

Check Commonwealth regulation for additional restrictions.

(b) Puerto Rico.

	Ducks	Common moorhens (Gallinules)	Common Snipe
Daily bag limits...	3	6	6
Possession limits.....	6	12	12
Season dates .....	Nov. 5 to Dec. 5, 1988 and Feb. 4 to Feb. 27, 1989.		
Shooting hours daily.....	One-half hour before sunrise until sunset.		

**Restrictions:** No season is prescribed for waterfowl in the Municipality of Culebra and on Desecheo Island. The season is closed on the ruddy duck (*Oxyura jamaicensis*); Bahama pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna*

*arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*); masked duck (*Oxyura dominica*); purple gallinule (*Porphyryula martinica*); American coot (*Fulica americana*); and Caribbean coot (*Fulica carbaea*).

Check Commonwealth regulations for additional restrictions.

**Note:** Local names for game birds: Ruddy duck (*Oxyura jamaicensis*)—Patro rojo (protected); purple gallinule (*Porphyryula martinica*)—Gallareta azul (protected); and Puerto Rican plain pigeon (*Columba inornata wetmorei*)—Paloma sabanera (protected).

(c) Virgin Islands.

	Zenaida Dove	Scaly-naped Pigeon	Ducks
Daily bag limits.....	10	5	3
Possession limits.....	10	5	6
Season dates:			
Zenaida dove and scaly-naped pigeon.....	September 1 through October 30, 1988.		
Ducks only .....	December 7, 1988, through January 30, 1989.		
Shooting hours .....	One half-hour before sunrise until sunset.		

**Restrictions:** Seasons are closed for ground or quail doves and pigeons (except scaly-naped pigeon) in the Virgin Islands. The season is closed on the ruddy duck (*Oxyura jamaicensis*); White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*); masked duck (*Oxyura dominica*), and purple gallinule (*Porphyryula martinica*).

Daily Bag and Possession Limits

Area	Ducks (1)	Geese (2)	Emperor geese	Bryant	Common Snipe	Sandhill Cranes
Units 11-13 & 17-26.....	8-24	6-12	Closed .....	2-4	8-16	Units 11-13 & 18-26, 3-6; Unit 17, 2-4.
Units 5-7, 9, 14-16 & 10 (Unimak Island only) .....	6-18	6-12	Closed .....	2-4	8-16	2-4.
Units 1-4.....	5-15	6-12	Closed .....	2-4	8-16	2-4.
Unit 10 (except Unimak Island).....	5-15	6-12	Closed .....	2-4	8-16	2-4.
Unit 8.....	5-15	6-12	Closed .....	2-4	8-16	2-4.

(1) In Units 1-26 (Statewide) the season on canvasbacks will be closed and the basic daily bag and possession limits may include not more than 2 and 6 pintails, respectively. In addition to the basic daily bag and possession limits, a daily bag limit of 15 and a possession limit of 30 is permitted singly or in the

aggregate of the following species: scoter, eider, oldsquaw, harlequin, and common and red-breasted mergansers.

(2) No more than 4 daily, or 8 in possession may be any combination of Canada and/or white-fronted geese, provided that: in Units 1-9 and 14-18, no more than 2 daily, or 4 in possession,

**Note.**—Local names for game birds: Zenaida dove—mountain dove; Bridled quail dove—Barbary dove, partridge (protected); Ground dove—stone dove, tobacco dove, rola, tortolita (protected); Scaly-naped pigeon—red-necked pigeon, scaled pigeon.

Check Commonwealth regulations for additional restrictions.

3. Section 20.102 is revised to read as follows:

§ 20.102 Seasons, limits, and shooting hours for Alaska.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

Shooting and hawking hours: One-half hour before sunrise to sunset daily.

Check state regulations for additional restrictions, including area descriptions.

Open seasons	Ducks, Geese (including Brant), Cranes, and Snipe
<b>Area:</b>	
State Game Mgmt. Units: 11-13 and 17-26.	Sept. 1-Dec. 16.
State Game Mgmt. Units: 5-7, 9, 14-16 & 10 (Unimak Island only).	Sept. 1-Dec. 16.
State Game Mgmt. Units: 1-4 .....	Sept. 1-Dec. 16.
State Game Mgmt. Unit 10 (except Unimak Island).	Oct. 8-Jan. 22.
State Game Mgmt. Unit 8 .....	Oct. 8-Jan. 22.

may be white-fronted geese. In Units 5 and 6, the taking of Canada geese is only permitted from September 21 through December 16. In Units 8, 9(E), 10 (except Unimak Island) and 18, the taking of Canada geese is prohibited. In Unit 1(C), the taking of snow geese is prohibited. In Units 1-26 (Statewide) the



taking of Aleutian and cackling Canada geese and emperor geese is prohibited.

Special Tundra Swan Season: In Unit 22 there will be an experimental tundra swan season from September 1 through October 30, 1988, with a limit of 1 swan per hunter per season. This season is by registration permit (300 only).

4. Section 20.103 is revised to read as follows:

**§ 20.103 Seasons, limits, and shooting hours for mourning and white-winged doves and wild pigeons.**

Subject to the applicable provisions of the preceding sections of this part, the area open to hunting, the respective open seasons (dated inclusive), the shooting and hawking hours and the daily bag and possession limits on the species designated in this section are prescribed as follows:

(a) Mourning Doves—Eastern Management Unit.

In Delaware, Florida, Georgia, Louisiana, Maryland, Pennsylvania, Rhode Island, South Carolina, Virginia and West Virginia:	
Daily bag limit.....	12
Possession limit.....	24
In Illinois, Indiana, Kentucky, Mississippi, North Carolina and Tennessee:	
Daily bag limit.....	15
Possession limit.....	30
In Alabama:	
North Zone:	
Daily bag limit.....	15
Possession limit.....	15
South Zone:	
Daily bag limit.....	12
Possession limit.....	12
Shooting and hawking hours:	
One-half hour before sunrise to sunset except as noted otherwise:	
Alabama:	
North Zone: (1)	
12 Noon to sunset.....	Sept. 10.
½ hour before sunrise to sunset.	Sept. 11-Oct. 15 & Dec. 23-Jan. 15.
South Zone: (1)	
½ hour before sunrise to sunset.	Sept. 24-Sept. 25 & Oct. 8-Nov. 25.
12 noon to sunset.....	Dec. 23-Jan. 8.
Connecticut.....	Closed.
Delaware (12 noon to sunset).	Sept. 3-Sept. 24 & Oct. 17-Oct. 29 & Dec. 8-Jan. 11.
Florida (2):	
12 noon to sunset.....	Oct. 1-Oct. 23.
½ hour before sunrise to sunset.	Nov. 12-Nov. 27 & Dec. 10-Jan. 8.

Georgia:		
North Zone (3):		
12 noon to sunset.....	Sept. 3	
½ hour before sunrise to sunset.	Sept. 4-Oct. 2 & Nov. 24-Nov. 27 & Dec. 10-Jan. 14.	
South Zone (3):		
12 noon to sunset.....	Sept. 24	
½ hour before sunrise to sunset.	Sept. 25-Oct. 23 & Nov. 24-Nov. 27 & Dec. 10-Jan. 14.	
Illinois (12 noon to sunset) ...	Sept. 1-Oct. 30.	
Indiana:		
12 noon to sunset.....	Sept. 1-Oct. 16.	
½ hour before sunrise to sunset.	Nov. 4-Nov. 13 & Nov. 24-Nov. 27.	
Kentucky:		
11 a.m. to sunset .....	Sept. 1-Sept. 30 & Oct. 8-Oct. 31.	
Sunrise to sunset.....	Dec. 1-Dec. 6.	
Louisiana:		
12 noon to sunset.....	Sept. 3-Sept. 4 & Oct. 15-Oct. 16 & Dec. 10-Dec. 11.	
½ hour before sunrise to sunset.	Sept. 5-Sept. 11 & Oct. 17-Nov. 13 & Dec. 12-Jan. 9.	
Maine.....	Closed.	
Maryland:		
12 noon to sunset.....	Sept. 1-Oct. 22.	
½ hour before sunrise to sunset.	Nov. 11-Nov. 19 & Dec. 16-Dec. 24.	
Massachusetts .....	Closed.	
Michigan .....	Closed.	
Mississippi (½ hour before sunrise to sunset).	Sept. 3-Sept. 18 & Oct. 22-Nov. 12 & Dec. 25-Jan. 15.	
New Hampshire .....	Closed.	
New Jersey .....	Closed.	
New York.....	Closed.	
North Carolina:		
½ hour before sunrise to sunset.	Sept. 3-Oct. 8 & Nov. 23-Nov. 26 & Dec. 19-Jan. 7.	
Ohio .....	Closed.	
Pennsylvania:		
12 noon to sunset.....	Sept. 1-Oct. 15.	
½ hour before sunrise to sunset.	Oct. 29-Nov. 19.	
Rhode Island:		
12 noon to sunset.....	Sept. 12-Sept. 25.	
Sunrise to sunset.....	Oct. 15-Nov. 18 & Dec. 19-Jan. 8.	
South Carolina (½ hour before sunrise to sunset).	Sept. 3-Oct. 8 & Nov. 19-Nov. 26 & Dec. 17-Jan. 11.	
Tennessee:		
½ hour before sunrise to sunset.	Sept. 1-Sept. 29 & Oct. 8-Oct. 22 & Dec. 10-Dec. 25.	
Vermont .....	Closed.	
Virginia:		
12 noon to sunset.....	Sept. 3-Nov. 5.	
½ hour before sunrise to sunset.	Dec. 24-Dec. 26 & Dec. 31-Jan. 2.	
West Virginia:		
12 noon to sunset.....	Sept. 1-Oct. 31.	
½ hour before sunrise to sunset.	Dec. 26-Jan. 3.	
Wisconsin.....	Closed.	

(1) In Alabama, the South Zone is defined as: Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, Houston and Henry Counties. North Zone: remainder of the State.

(2) In Florida, the daily bag limit is 12 mourning and white-winged doves in the aggregate, of which not more than 4 may be white-winged doves. The possession limit is 24 mourning and white-winged doves in the aggregate, of which not more than 8 may be white-winged doves.

(3) In Georgia, the North Zone is defined as that area lying north of a division line as follows: U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County, thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border to Jeff Davis County, south along the western border of Jeff Davis County, east along the southern border of Jeff Davis and Appling Counties, north along the eastern border of Appling County to the Altamaha River, east to the eastern border of Tattnall County; north along the eastern boundary to Tattnall County, north along the western border of Evans County to Candler County, east along the northern border of Evans County to Bulloch County, north along the western border of Bulloch County to Highway



301, then northeast along Highway 301 to the South Carolina line.

(b) *Mourning Doves—Central Management Unit.*

In Missouri:	
Daily bag limit	10
Possession limit	20
In Texas:	
Daily bag limit	12 (3)
Possession limit	24 (3)
In Arkansas, Colorado, Kansas, Nebraska, North Dakota, New Mexico, Oklahoma, South Dakota, Wyoming and Montana:	
Daily Bag limit	15 (1)
Possession limit	30 (1)

Shooting and hawking hours: One-half hour before sunrise until sunset except as noted otherwise.

Check state regulations for additional restrictions, including area descriptions.

Arkansas	Sept. 3–Sept. 25 and Oct. 8–Oct. 23 and Dec. 17–Jan. 6.
Colorado	Sept. 1–Oct. 30.
Iowa	Closed.
Kansas	Sept. 1–Oct. 30.
Minnesota	Closed.
Missouri	Sept. 1–Nov. 9.
Montana	Sept. 3–Oct. 12.
Nebraska	Sept. 1–Oct. 30.
New Mexico (1)	Sept. 1–Sept. 30 and Dec. 1–Dec. 30.
North Dakota	Sept. 1–Oct. 30.
Oklahoma	Sept. 1–Oct. 30.
South Dakota	Sept. 1–Oct. 21.
Texas: (2)(3)	
North Zone	Sept. 1–Nov. 9.
Central Zone	Sept. 1–Oct. 30 and Jan. 7–Jan. 16.
South Zone (4)	Sept. 20–Nov. 18 and Jan. 7–Jan. 16.
Wyoming	Sept. 1–Oct. 15.

(1) In New Mexico, the daily bag limit is 15 and the possession limit is 30 white-winged and mourning doves, singly or in the aggregate of these species.

(2) In Texas, the three zones are North, South and Central as follows:

**North Zone**—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate Highway 30 to the Texas-Arkansas State line.

**South Zone**—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State

Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. 90 to San Antonio; then east on Interstate 10 to Orange, Texas.

**Central Zone**—That portion of the State lying between the North and South Zones.

(3) In Texas, the daily bag limit is 12 mourning, white-winged and white-tipped doves in the aggregate, of which no more than 2 can be white-winged doves and 2 can be white-tipped doves; and the possession limit is 24, of which no more than 4 may be whitewings, and 4 may be whitetips.

(4) In Texas, the mourning dove season in the Special White-winged Dove Area of the South Zone is Sept. 20–Nov. 14 and Jan. 7–Jan. 16.

(c) *Mourning Doves—Western Management Unit.*

In Arizona, California, Idaho, Nevada, Oregon, Washington and Utah:	
Daily bag limit	10 (1)(2)
Possession limit	20 (1)(2)

Shooting and hawking hours: One-half hour before sunrise until sunset.

Check state regulations for additional restrictions, including area descriptions.

Arizona (1)	Sept. 1–Sept. 11 and Nov. 21–Jan. 8.
California (2)	Sept. 1–Sept. 15 and Nov. 12–Dec. 26.
Idaho	Sept. 1–Sept. 30.
Nevada (2)	Sept. 1–Sept. 30.
Oregon	Sept. 1–Sept. 30.
Utah	Sept. 1–Sept. 30.
Washington	Sept. 1–Sept. 15.

(1) In Arizona, during September 1 through 11 the daily limit is 10 mourning and white-winged doves in the aggregate of which no more than 6 may be white-winged doves. The possession limit after opening day is 20 mourning and white-winged doves in the aggregate of which no more than 12 may be white-winged doves. During November 21 through January 8, the bag and possession limits are 10 and 20 mourning doves, respectively.

(2) In those counties of California (Imperial, Riverside, and San Bernardino) and Nevada (Clark and Nye) having a season on white-winged doves, the daily bag limit is 10 and the possession limit is 20 mourning and white-winged doves, singly or in the aggregate of these species.

**Hawaii Regulations.** Subject to the applicable provisions of the preceding sections of this part, mourning doves may be taken in accordance with the State regulations.

(d) *White-winged Doves.*

Shooting and hawking hours: One-half hour before sunrise until sunset except as noted otherwise.

Check state regulations for additional restrictions, including area descriptions.

Seasons in	Season dates	Limits	
		Bag	Poss.
Arizona (Statewide).	Sept. 1–Sept. 11.	6(1)	12(1)
California: (2)			
Imperial, Riverside, and San Bernardino Counties.	Sept. 1–Sept. 15 and Nov. 12–Dec. 26.	10(2)	20(2)
Remainder of State.	Closed.		
Florida:	See Mourning dove regulations.		
Nevada: (2)			
Clark and Nye Counties.	Sept. 1–Sept. 30.	10(2)	20(2)
Remainder of State.	Closed.		
New Mexico: (3)....	Sept. 1–Sept. 30 and Dec. 1–Dec. 30.	15(3)	30(3)
Texas: (4)			
Area in South Zone.	Sept. 3, 4, 10 and 11.	10(5)	20(5)
Remainder of State.	See Mourning dove regulations.		

(1) In Arizona, during September 1 through 11 the daily bag limit is 10 mourning and white-winged doves in the aggregate of which no more than 6 may be white-winged doves. The possession limit after opening day is 20 mourning and white-winged doves in the aggregate of which no more than 12 may be white-winged doves.

(2) In designated counties of California and Nevada, the daily bag limit is 10 and the possession limit is 20 white-winged and mourning doves, singly or on the aggregate of both species.

(3) In New Mexico, the daily bag limit is 15 and the possession limit is 30 white-winged and mourning doves, singly or in the aggregate of both species.

(4) Special White-Winged Dove Area in the South Zone—That portion of State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway



20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. Highway 90 to Uvalde, south on U.S. Highway 83 to State Highway 44; east along State Highway 44 to State Highway 16 at Freer; south along State Highway 16 to State Highway 285 at Hebbbronville, east along State Highway 285 to FM 1017; southeast along FM 1017 to State Highway 186 at Linn; east along State Highway 186 to Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

(5) In Texas, the daily bag limit in the Special White-winged Dove Area is 10 white-winged, mourning and white-tipped doves in the aggregate of which no more than 2 may be mourning doves and 2 may be white-tipped doves. Possession limit is twice the daily bag limit.

(e) *Band-tailed Pigeons.*

Shooting and hawking hours: One-half hour before sunrise until sunset.

Check state regulations for additional restrictions, including area descriptions.

Seasons in	Season dates	Limits	
		Bag	Poss.
Arizona (1).....	Oct. 7-Nov. 5.....	5	10

Seasons in	Season dates	Limits	
		Bag	Poss.
California:			
Alpine, Butte, Del Norte, Glen, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.	Sept. 24-Oct. 9..	4	4
Remainder of State.	Dec. 10-Dec. 25.	4	4
Colorado:			
In all lands west of U.S. Interstate 25 and Small Game Management Units 128, 129, 133-136 and 140-142.	Sept. 1-Sept. 30.	5	10
Nevada:			
Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral, and Storey Counties only.	Sept. 15-Sept. 30.	4	4

Seasons in	Season dates	Limits	
		Bag	Poss.
New Mexico:			
North Zone (2).	Sept. 1-Sept. 20.	5	10
South Zone (2).	Oct. 1-Oct. 20....	5	10
Oregon.....	Sept. 15-Sept. 30.	4	4
Utah.....	Sept. 1-Sept. 30.	5	10
Washington.....	Sept. 17-Sept. 25.	4	4

(1) In Arizona, each hunter must have a special bird permit stamp issued by the State.

(2) In New Mexico, the *North Zone* is defined as that area lying north and east of a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and then south along Interstate Highway 25 to the Texas State line. The *South Zone* is that area lying south and west of the North Zone.

5. Section 20.104 is revised to read as follows:

**§ 20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.**

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are as follows:

	Rails (Sora and Virginia)	Rails (Clapper and King)	Woodcock	Common Snipe
Daily bag limit.....	25 (1).....	See footnote (2).....	5 (3) 8.....	
Possession limit.....	25 (1).....	See footnote (2).....	10 (3) 16.....	
Shooting Hours: One-half hour before sunrise until sunset daily on all species, except as noted otherwise.				
Check state regulations for additional restrictions, including area descriptions.				
<i>Seasons in the Atlantic Flyway:</i>				
Connecticut.....	Sept. 1-Nov. 9.....	Sept. 1-Nov. 9.....	Oct. 15-Nov. 28.....	Oct. 15-Nov. 28.
Delaware.....	Sept. 1-Nov. 9.....	Sept. 1-Nov. 9.....	Nov. 21-Jan. 4.....	Nov. 21-Jan. 31.
Florida.....	Sept. 1-Nov. 9.....	Sept. 1-Nov. 9.....	Dec. 10-Jan. 23.....	Nov. 1-Feb. 15.
Georgia.....	Sept. 24-Dec. 2.....	Sept. 24-Dec. 2.....	Nov. 26-Jan. 9.....	Nov. 20-Feb. 28.
Maine.....	Sept. 1-Nov. 9.....	Closed.....	Oct. 1-Nov. 14.....	Sept. 1-Dec. 16.
Maryland.....	Sept. 1-Nov. 9.....	Sept. 1-Nov. 9.....	Oct. 12-Nov. 25.....	Oct. 1-Nov. 25 and Nov. 28-Jan. 17.
Massachusetts.....	Sept. 1-Nov. 7.....	Closed.....	Oct. 10-Nov. 23.....	Sept. 1-Dec. 12.
New Hampshire.....	Closed.....	.....do.....	Oct. 1-Nov. 14.....	Sept. 15-Nov. 30.
New Jersey (4):				
North Zone.....	Sept. 1-Nov. 9.....	Sept. 1-Nov. 9.....	Oct. 15-Nov. 18.....	Oct. 1-Jan. 15.
South Zone.....	Sept. 1-Nov. 9.....	Sept. 1-Nov. 9.....	Nov. 12-Dec. 3 and Dec. 17-Dec. 29.	Oct. 1-Jan. 15.
New York.....	Sept. 1-Nov. 9.....	Closed.....	Oct. 1-Nov. 14.....	Sept. 1-Dec. 16.
North Carolina.....	Sept. 3-Nov. 11.....	Sept. 3-Nov. 11.....	Nov. 19-Jan. 2.....	Nov. 14-Feb. 28.
Pennsylvania.....	Sept. 1-Nov. 7.....	Closed.....	Oct. 22-Nov. 12.....	Oct. 22-Dec. 10.
Rhode Island.....	Sept. 12-Nov. 20.....	Sept. 12-Nov. 20.....	Oct. 15-Nov. 28.....	Sept. 12-Dec. 2 and Dec. 12-Jan. 5.
South Carolina.....	Sept. 12-Nov. 23.....	Sept. 15-Nov. 23.....	Nov. 24-Dec. 10 and Dec. 24-Jan. 20.	Nov. 14-Feb. 28.
Vermont.....	Sept. 24-Dec. 2.....	Closed.....	Oct. 1-Nov. 14.....	Sept. 24-Dec. 2.
Virginia.....	Sept. 1-Nov. 9.....	Sept. 1-Nov. 9.....	Nov. 7-Nov. 29 and Dec. 21-Jan. 11.	Oct. 17-Jan. 31.



	Rails (Sora and Virginia)	Rails (Clapper and King)	Woodcock	Common Snipe
West Virginia	Sept. 1-Nov. 9	Closed	Oct. 15-Nov. 28	Sept. 1-Dec. 16
<i>Seasons in the Mississippi Flyway:</i>				
Alabama (10)	Nov. 12-Jan. 20	Nov. 12-Jan. 20	Nov. 28-Jan. 31	Nov. 14-Feb. 28
Arkansas	Sept. 13-Nov. 12	Closed	Nov. 5-Dec. 11 and Jan. 7-Feb. 3	Nov. 14-Feb. 28
Illinois	Sept. 3-Nov. 11	do	Oct. 1-Dec. 4	Sept. 3-Dec. 16
Indiana	Sept. 1-Nov. 9	do	Sept. 17-Sept. 23 and Oct. 1-Nov. 27	Sept. 1-Dec. 16
Iowa (5)	Sept. 3-Nov. 11	do	Sept. 17-Nov. 20	Sept. 3-Dec. 18
Kentucky	Deferred	do	Oct. 1-Dec. 4	Oct. 1-Dec. 4
Louisiana	Nov. 19-Jan. 20	Nov. 19-Jan. 20	Dec. 10-Feb. 12	Nov. 12-Feb. 26
Michigan (6)	Sept. 15-Nov. 14	Closed	Sept. 15-Nov. 14	Sept. 15-Nov. 14
Minnesota	Sept. 1-Nov. 4	do	Sept. 1-Nov. 4	Sept. 1-Nov. 4
Mississippi	Oct. 15-Dec. 23	Oct. 15-Dec. 23	Dec. 26-Feb. 28	Nov. 14-Feb. 28
Missouri	Sept. 1-Nov. 9	Closed	Oct. 15-Dec. 18	Sept. 1-Dec. 16
Ohio	Sept. 1-Nov. 9	do	Sept. 23-Nov. 26	Sept. 1-Nov. 26 and Dec. 5-Dec. 24
Tennessee	Deferred	do	Oct. 22-Nov. 27 and Feb. 1-Feb. 28	Nov. 14-Feb. 28
Wisconsin	Oct. 8-Nov. 20	do	Sept. 17-Nov. 20	Oct. 8-Nov. 20
<i>Seasons in the Central Flyway:</i>				
Colorado (7)	Sept. 1-Nov. 9	do	Closed	Sept. 1-Dec. 2
Kansas	Sept. 1-Nov. 9	do	Oct. 1-Dec. 4	Sept. 1-Dec. 16
Montana (7)	Closed	do	Closed	Oct. 1-Jan. 1
Nebraska (8)	Sept. 1-Nov. 9	do	Sept. 15-Nov. 18	Sept. 1-Dec. 15
New Mexico (7) (11)	Oct. 8-Dec. 14	do	Closed	Oct. 8-Jan. 8
North Dakota	Closed	do	do	Oct. 1-Nov. 27
Oklahoma	Sept. 1-Nov. 9	do	Oct. 24-Dec. 27	Oct. 1-Jan. 15
South Dakota (9)	Closed	do	Closed	Sept. 1-Oct. 31
Texas	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Deferred	Deferred
Wyoming (7)	Sept. 17-Nov. 25	Closed	Closed	Sept. 17-Jan. 1
<i>Seasons in the Pacific Flyway:</i>				
Colorado (7)	Sept. 1-Nov. 9	do	do	Sept. 1-Dec. 2
Montana (7)	Closed	do	do	Oct. 1-Jan. 1
New Mexico (7) (11)	Oct. 8-Dec. 14	do	do	Oct. 8-Jan. 8
Wyoming (7)	Sept. 17-Nov. 25	do	do	Sept. 17-Dec. 18

Note: No seasons are prescribed for woodcock. Snipe seasons have been deferred by all other States in the Pacific Flyway.

- (1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these two species.
- (2) In addition to the limits on sora and Virginia rails, in Connecticut, Delaware, Maryland, New Jersey, and Rhode Island, there is a daily bag limit of 10 and possession limit of 20 clapper and king rails, singly or in the aggregate of these two species, except that the season is closed on king rails in New Jersey by State regulation. In Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia, there is a daily bag limit of 15 and possession of limit of 30 clapper and king rails, singly or in the aggregate of these two species.
- (3) In States of the Atlantic Flyway, the woodcock bag limit is 3 daily and 6 in possession.
- (4) For description of zones or management units within a State, see State regulations.
- (5) In Iowa, rail limits are 15 daily and 25 in possession.
- (6) See State regulations for listing of certain Great Lakes waters where the season is to open concurrently with the duck season.
- (7) The Central Flyway portion consists of: *Colorado* and *Wyoming*—the area lying east of the Continental Divide; *Montana*—the area lying east of Hill, Chouteau, Cascade, Meagher, and Park Counties; *New Mexico*—the area lying east of the Continental Divide but outside the Jicarilla Apache Indian Reservation. The remaining portions of these States are in the Pacific Flyway.
- (8) In Nebraska, the rail limits are 10 daily and 20 in possession.
- (9) In South Dakota, the snipe limits are 5 daily and 15 in possession.
- (10) In Alabama, the rail limits are 15 daily and 15 in possession.
- (11) In New Mexico, the rail limits are 10 daily and 10 in possession.

Note: Some States may select rail, woodcock, and snipe seasons at the time they select their duck seasons in August. Consult waterfowl regulations to be published later for information concerning these seasons.

6. Section 20.105 is amended by revising paragraphs (a) through (c) and by amending paragraph (d) to read as follows:

**§ 20.105 Seasons, limits, and shooting hours for waterfowl, coots, and common moorhens and purple gallinules**

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

(a) *Sea Ducks*. (1) An open season for taking scoter, eider and oldsquaw ducks

is prescribed according to the following table during the period between September 15, 1988, and January 20, 1989, in all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and New York; in any waters of the Atlantic Ocean and, in addition, in any tidal waters of any bay which are separated by at least one mile of open water from any shore, island and emergent vegetation in New Jersey, South Carolina and Georgia; and in any waters of the Atlantic Ocean and/or in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated and

designated as special duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck season conventional or point-system daily bag and possession limits.

(2) The daily bag limit is 7 and the possession limit is 14, singly or in the aggregate of these species. Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may set, in addition to the regular season limits, a daily bag limit of 7 and a possession limit of 14 scoter, eider and oldsquaw ducks, singly or in the aggregate of these species.

(3) Shooting hours are one-half hour before sunrise until sunset daily.



## Check state regulations for additional restrictions.

Seasons in:	
Connecticut.....	Deferred.
Delaware.....	Sept. 24-Jan. 7.
Georgia.....	Deferred.
Maine.....	Deferred.
Maryland.....	Oct. 6-Jan. 20.
Massachusetts.....	Deferred.
New Hampshire.....	Sept. 15-Dec. 30.
New Jersey.....	Oct. 1-Jan. 15.
New York (Long Island only).....	Sept. 24-Jan. 8.
North Carolina.....	Deferred.
Rhode Island.....	Deferred.
South Carolina.....	Deferred.
Virginia.....	Deferred.

(4) Notwithstanding the provisions of this Part 20, the shooting of *crippled* waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia and Maryland in those areas described, delineated and designated in their respective hunting regulations as being open to sea duck hunting.

Note: States with deferred seasons may select sea duck seasons at the time they select their waterfowl seasons in August. Consult waterfowl regulations to be published later for information concerning these later seasons.

(b) *Teal*. The September teal season is suspended in 1988.

(c) *Common Moorhens and Purple Gallinules*.

Daily bag limit.....	15 singly or in the aggregate of the two species
Possession limit.....	30 singly or in the aggregate of the two species

Shooting hours: One-half hour before sunrise to sunset.

Check state regulations for additional restrictions.

## Seasons in the Atlantic

Flyway:	
Connecticut.....	Sept. 1-Nov. 9.
Delaware.....	Sept. 1-Nov. 9.
Florida (1).....	Sept. 1-Nov. 9.
Georgia.....	Deferred.
Maine.....	Sept. 1-Nov. 9.
Maryland.....	Closed.
Massachusetts.....	Closed.
New Hampshire.....	Closed.
New Jersey (2).....	Sept. 1-Nov. 9.
New York:	
Long Island.....	Closed.
Remainder of State.....	Sept. 1-Nov. 9.
North Carolina.....	Sept. 3-Nov. 11.
Pennsylvania.....	Sept. 1-Nov. 7.
Rhode Island.....	Sept. 12-Nov. 20.
South Carolina.....	Sept. 15-Nov. 23.
Vermont.....	Sept. 24-Dec. 2.
Virginia.....	Deferred.
West Virginia.....	Deferred.

## Seasons in the Mississippi

Flyway:	
Alabama (3).....	Nov. 12-Jan. 20.
Arkansas.....	Sept. 1-Nov. 9.
Illinois.....	Closed.

Indiana.....	Sept. 1-Nov. 9.
Iowa.....	Closed.
Kentucky.....	Deferred.
Louisiana.....	Nov. 19-Jan. 20.
Michigan.....	Deferred.
Minnesota.....	Oct. 8-Nov. 6.
Mississippi.....	Oct. 15-Dec. 23.
Missouri.....	Closed.
Ohio.....	Sept. 1-Nov. 9.
Tennessee.....	Deferred.
Wisconsin.....	Oct. 8-Nov. 20.

## Seasons in the Central

Flyway:	
Colorado (4).....	Closed.
Kansas.....	Closed.
Montana (4).....	Closed.
Nebraska.....	Closed.
New Mexico (4)(5).....	Oct. 8-Jan. 8.
North Dakota.....	Closed.
Oklahoma.....	Sept. 1-Nov. 9.
South Dakota.....	Closed.
Texas.....	Sept. 1-Nov. 9.
Wyoming (4).....	Closed.

## Seasons in the Pacific

Flyway:	
All States and portions thereof.....	Deferred.

(1) The season in Florida applies to the common moorhen only. There is no open season on the purple gallinule in Florida.

(2) In New Jersey, the bag limit is 10 daily and 20 in possession.

(3) In Alabama, the bag limit is 15 daily and 15 in possession.

(4) Seasons apply to Central Flyway portion of State only.

(5) In New Mexico, the bag limit is 5 common moorhens daily and 10 in possession; there is no open season on the purple gallinule in New Mexico.

Note: States with deferred seasons may select gallinule seasons at the time they select their waterfowl seasons in August. Consult waterfowl regulations to be published later for information concerning these later seasons.

(d) *Waterfowl and coots in Atlantic, Mississippi, Central and Pacific Flyways*.

## Atlantic Flyway

## Flywaywide Restrictions.

Shooting (including hawking) hours: One half hour before sunrise to sunset daily except as otherwise restricted.

	Season dates	Limits	
		Bag	Pos-session
Florida			
Wood ducks.	Sept. 24-Sept. 28.	3	6
Mississippi Flyway			
Illinois (1)			
Canada Geese.	Sept. 1-Sept. 10.	5	10
Kentucky			
Wood ducks.	Sept. 7-Sept. 11.	2	4

	Season dates	Limits	
		Bag	Pos-session
Michigan (1)			
Canada Geese.	Sept. 1-Sept. 10.	3	6
Minnesota (1)			
Canada Geese.	Sept. 1-Sept. 10.	4	8
Tennessee			
Wood ducks.	Sept. 10-Sept. 14.	2	4

(1) Check State regulations for areas open to the hunting of Canada geese.

7. Section 20.106 is revised to read as follows:

## § 20.106 Seasons, limits, and shooting hours for sandhill cranes.

*Central Flyway*: Subject to the applicable provisions of the preceding sections of this part, open seasons are prescribed for taking sandhill cranes with a daily bag limit of 3 and a possession limit of 6 cranes (unless otherwise noted), and with shooting hours from one-half hour before sunrise until sunset (unless otherwise noted) in the following areas for the dates indicated:

(a) In Colorado (the Central Flyway portion except the San Luis Valley and North Park) the inclusive dates are October 1 through November 27, 1988.

(b) In New Mexico (1) in the counties of Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt, the inclusive dates for the regular season are October 22, 1988, through January 22, 1989; (2) in the Middle Rio Grande Valley Hunt Area (described in State regulations) the inclusive dates for the experimental season are October 15 through October 30, 1988; and (3) in the Hatch-Deming Zone in the counties of Sierra, Luna, and Dona Ana the inclusive dates are January 1-January 8; January 13-January 15; January 20-January 22; and January 27-29, 1989.

Hunting in the experimental seasons is by State permit only, the daily bag limit is 3 sandhill cranes and the seasonal bag limit is 9, and shooting hours are sunrise to sunset.

(c) In Oklahoma (that portion west of I-35) the inclusive dates are October 22, 1988, through January 22, 1989.

(d) In Texas that portion west of a line from Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Sonora; U.S. 277 to Abilene; Texas 351 to Albany; U.S.



283 to Vernon; and U.S. 183 to the Texas-Oklahoma boundary the season has been deferred.

(e) In North Dakota (that portion west of U.S. Highway 281) the inclusive dates are September 10 through November 6, 1988.

(f) In South Dakota, the inclusive season dates are September 24 through October 30, 1988.

(g) In Montana (the Central Flyway portion except that area south of I-90 and west of the Bighorn River), the inclusive dates are October 1 through November 27, 1988.

(h) In Wyoming, in Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties, the inclusive season dates are September 17 through November 13, 1988.

Each hunter participating in the regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

#### Pacific Flyway

(a) In Arizona (within Game Management Units 30A, 30B, 31, and 32), the season selection has been deferred.

(b) In Wyoming's sandhill crane-Canada goose hunt areas: Hunting by State permit only.

Bear River area in Lincoln County—the season dates are September 3 through September 4, 1988. Season limits are 2 sandhill cranes per hunter.

Riverton Boysen Unit in Fremont County—the season dates are September 10 through September 11, 1988. Season limits are 2 sandhill cranes per hunter.

Salt River (Star Valley) area in Lincoln County—the season dates are September 3 through September 4, 1988. Season limits are 1 sandhill crane and 2 Canada geese per hunter.

Eden—Farson Agricultural Project in Sweetwater and Sublette Counties—the season dates are September 3 through September 4, 1988. Season limits are 2 sandhill cranes and 1 Canada goose per hunter.

8. Section 20.109 is revised to read as follows:

#### § 20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of this part, the areas open to hunting, the respective open seasons (dates inclusive), the hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

Daily bag limit.....	3 singly or in the aggregate.
Possession limit.....	6 singly or in the aggregate.

These limits apply during both regular hunting seasons and extended falconry seasons.

Hawking hours: One-half hour before sunrise until sunset daily.

Check state regulations for additional restrictions.

##### Atlantic Flyway

###### Florida:

Mourning doves and white-winged doves.....	Sept. 24-Dec. 2.
Woodcock.....	Oct. 22-Dec. 4.
Snipe.....	Nov. 1-Feb. 15.
Common moorhens and rails.....	Sept. 24-Dec. 3.

###### Maryland:

Mourning doves.....	Sept. 1-Oct. 23 and Nov. 1-Dec. 24.
Rails.....	Sept. 1-Dec. 16.
Woodcock.....	Oct. 5-Jan. 19.
Snipe.....	Oct. 1-Nov. 25 and Nov. 28-Jan. 17.

###### New Jersey:

Ducks.....	Oct. 3-Dec. 31 and Mar. 1-Mar. 10.
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###### Pennsylvania:

Mourning doves.....	Sept. 1-Dec. 16.
Ducks and geese.....	Oct. 8-Jan. 8.

###### Virginia:

Woodcock and snipe.....	Oct. 17-Jan. 31.
Mourning doves and rails.....	Sept. 1-Nov. 30 and Dec. 19-Jan. 3.

##### Mississippi Flyway

###### Illinois:

Mourning doves, woodcock, rails and snipe.....	Sept. 1-Dec. 16.
Ducks, mergansers and coots.....	Oct. 8-Jan. 8.

###### Indiana:

Mourning doves.....	Oct. 17-Nov. 3 and Jan. 1-Jan. 29.
Woodcock.....	Sept. 1-Sept. 16.

###### Iowa:

Ducks, coots, and geese.....	Sept. 1-Dec. 16.
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###### Michigan:

Snipe, rails and moorhens.....	Sept. 1-Dec. 16.
Ducks, coots, and geese.....	Oct. 4-Jan. 18.

###### Minnesota:

Woodcock, snipe, and rails.....	Sept. 1-Dec. 16.
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###### Missouri:

Mourning doves.....	Sept. 1-Dec. 16.
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##### Wisconsin:

Rails, woodcock, snipe, and gallinules.....	Sept. 1-Dec. 16.
Ducks, mergansers, and coots.....	Nov. 8-Jan. 22.
Geese.....	Oct. 1-Dec. 31.

##### Central Flyway

###### Colorado:

Ducks, mergansers, coots and geese.....	Sept. 1-Oct. 7 and Oct. 19-Nov. 4.
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###### Montana:

All migratory game birds excluding doves.....	Sept. 17-Jan. 1.
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###### New Mexico: (1)

Mourning doves.....	Sept. 1-Nov. 6 and Nov. 22-Dec. 30.
Band-tailed pigeons.....	Sept. 1-Nov. 30.
Sandhill cranes only in Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.....	Oct. 8-Jan. 22.

Ducks.....	Oct. 8-Jan. 15.
Canada and white-fronted geese.....	Oct. 8-Jan. 15.

Snow, blue, and Ross' geese.....	Nov. 28-Feb. 28.
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###### North Dakota:

All legal migratory game species.....	Sept. 1-Nov. 6.
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###### Oklahoma:

Duck, mergansers, and coots.....	Oct. 8-Jan. 22.
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###### Texas:

Mourning doves (statewide).....	Sept. 1-Nov. 20 and Jan. 1-Jan. 26.
Rails and gallinules.....	Sept. 1-Nov. 20 and Jan. 1-Jan. 26.
White-winged doves.....	Sept. 1-Nov. 20 and Jan. 1-Jan. 26.

###### Wyoming:

Mourning doves.....	Sept. 1-Oct. 15.
Snipe and rails.....	Sept. 17-Nov. 25.

##### Pacific Flyway

###### Colorado:

Ducks, mergansers, coots and geese.....	Sept. 1-Oct. 7 and Oct. 15-Oct. 24.
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###### New Mexico: (1)

Mourning doves.....	Sept. 1-Nov. 6 and Nov. 22-Dec. 30.
Band-tailed pigeons.....	Sept. 1-Nov. 30.
Ducks.....	Oct. 8-Jan. 8.
Canada and white-fronted geese.....	Oct. 8-Jan. 15.
Snow, blue and Ross' geese.....	Oct. 8-Jan. 8.

###### Oregon:

Doves and pigeons.....	Sept. 1-Dec. 16.
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###### Wyoming:

Mourning doves.....	Sept. 1-Oct. 15.
Snipe and rails.....	Sept. 17-Nov. 25.

Note: See waterfowl season footnotes for descriptions of zones. For some States, the extended falconry season dates also include general season dates.

Date: August 25, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

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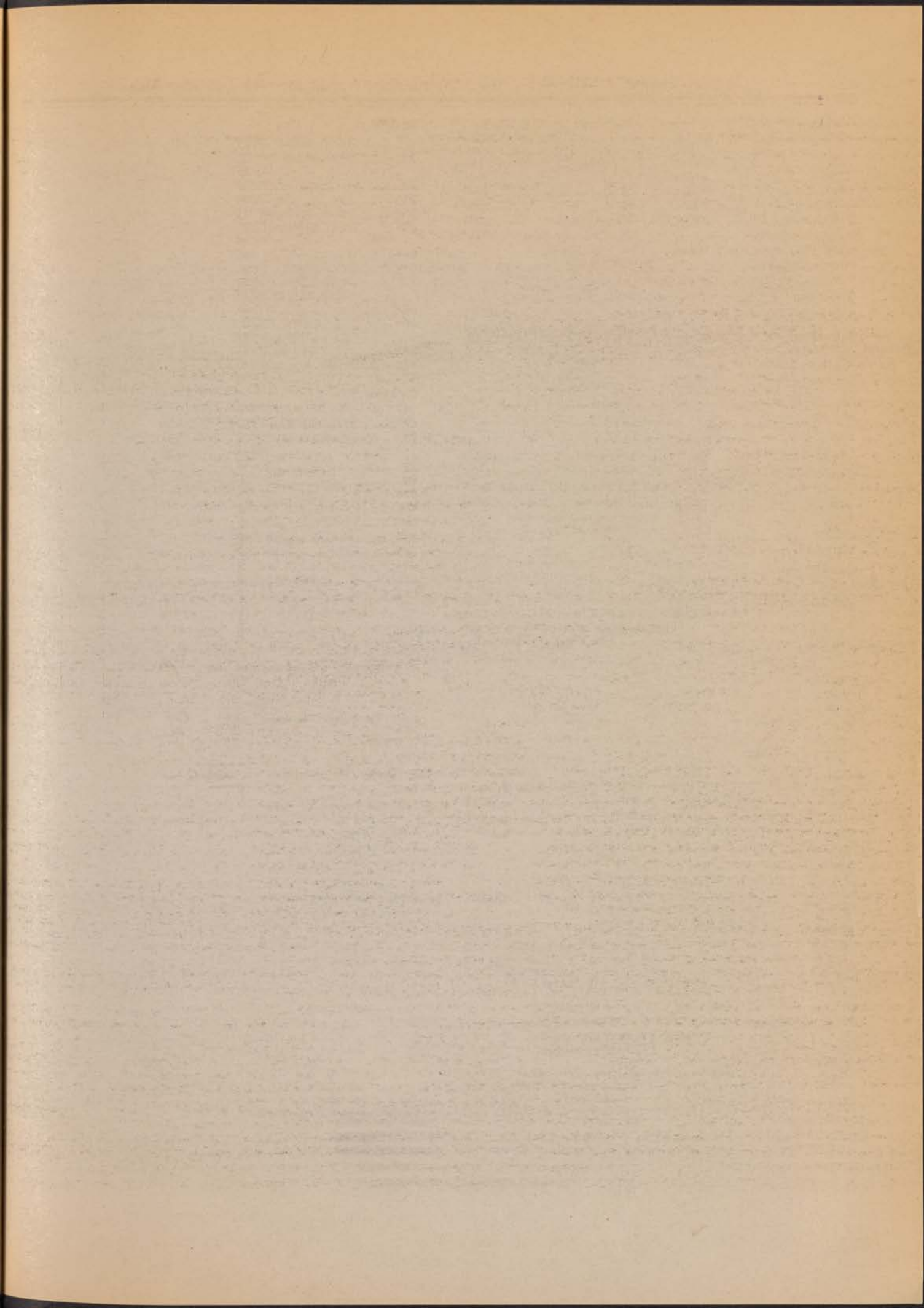
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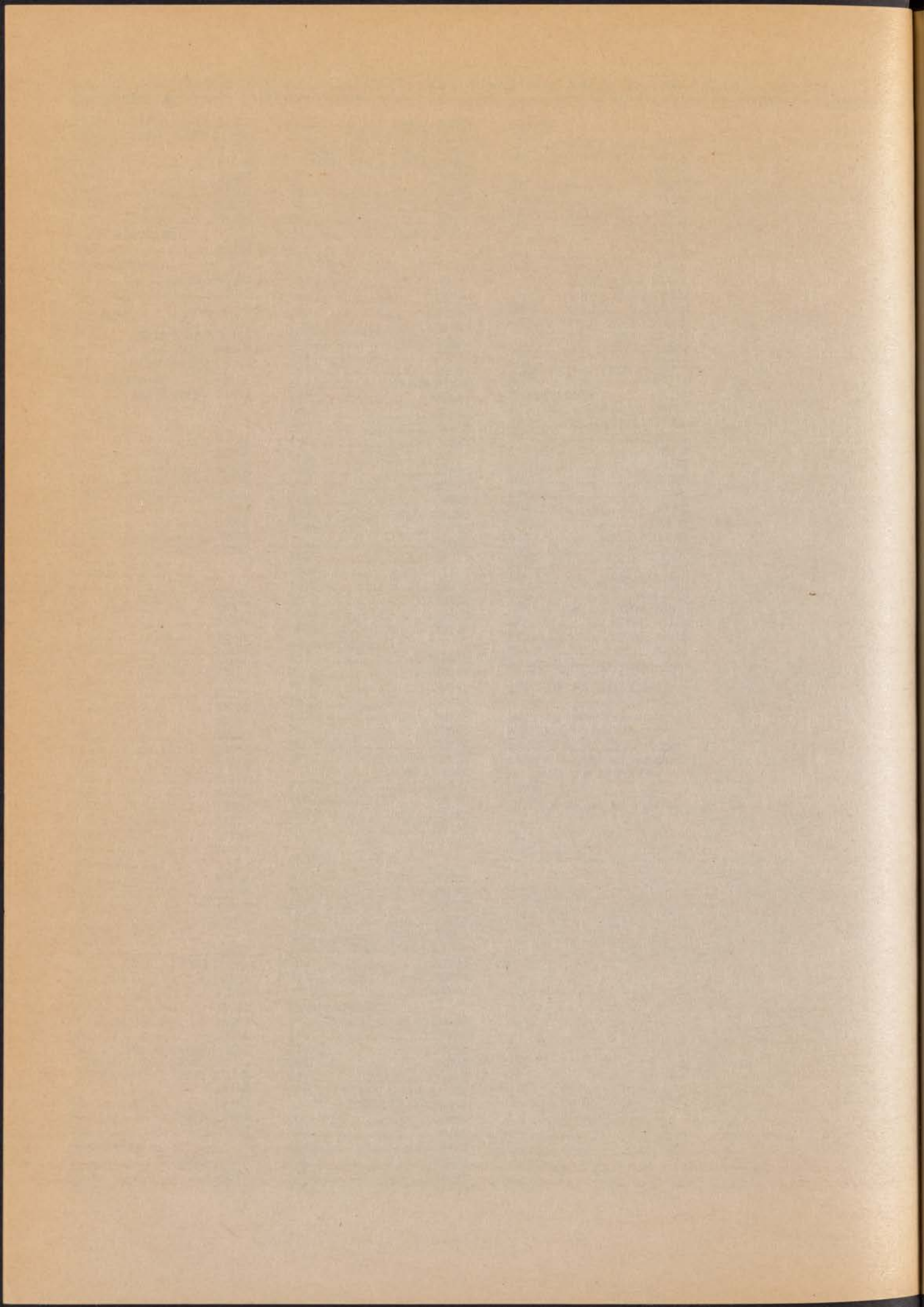
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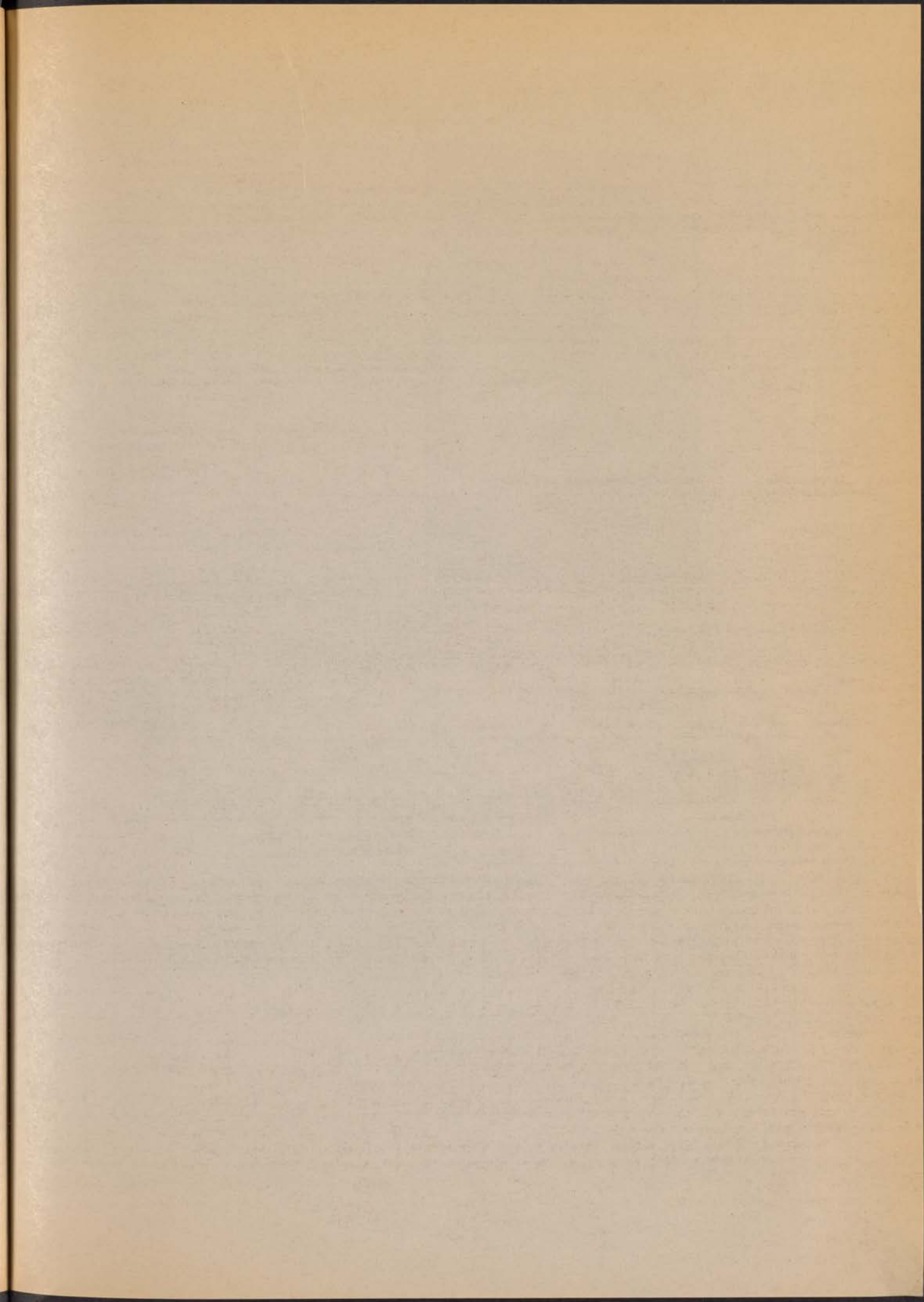






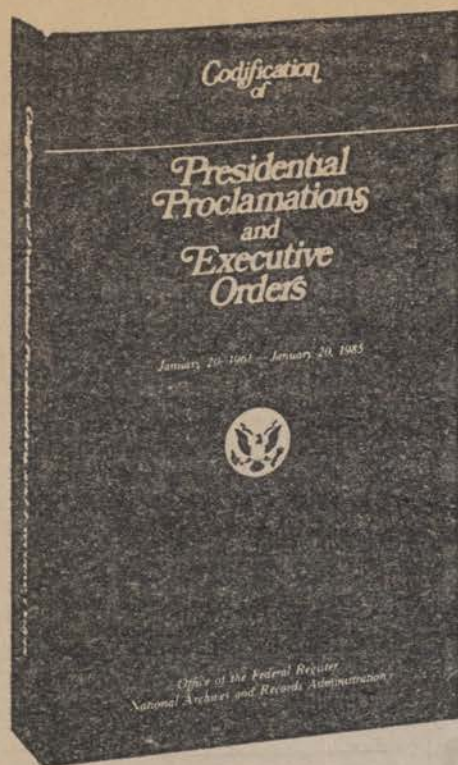








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